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

In the Matter of

ML Media Partners, L.P. Trading as MultiVision Cable TV CUID Nos. CA0305, CA0306, CA0317, CA0318, CA0319 and CA0619

Filings To Support Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 7, 1995;

Released: March 8, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the prices ML Media Partners, L.P., Trading as MultiVision Cable TV ("MultiVision") was charging for its cable programming service ("CPS") tiers in numerous communities around California (the "subject communities"). See Appendix for a list of the subject communities and the number of basic and CPS channels MultiVision offered in each community both before and after September 1, 1993. Rather than attempting to justify its prices through a benchmark or cost of service showing, MultiVision responded to the complaints by stating that it has no CPS tier in those systems. On June 24, 1994 MultiVision filed FCC Form 393 for the subject communities. On February 3, 1995, in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings,²

MultiVision submitted rate cards and channel line-ups in support of its claim that CPS tiers subject to rate regulation did not exist as of September 1, 1993 and still do not exist in any of the subject communities.

- 2. Under the Cable Television Consumer Protection and Competition Act of 1992,³ 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.⁴ Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.⁵ In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.⁶
- 3. The Commission's original rate regulations took effect on September 1, 1993.⁷ The Commission subsequently revised its rate regulations effective May 15, 1994.⁸ 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.⁹ Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.¹⁰ Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.¹¹

II. BACKGROUND

4. The Cable Services Bureau has addressed the regulatory status of packages of channels offered on an a la carte basis in several orders resolving letters of inquiry ("LOIs") directed to cable operators. ¹² Of particular relevance to this case, the Cable Services Bureau has released orders resolving LOIs regarding Century Cable TV's ("Century") systems in Huntington, West Virginia; Morgantown, West Virginia; Muncie, Indiana; Owensboro, Kentucky; Yuma, Arizona; Brunswick, Georgia; and San Juan, Puerto Rico. ¹³ Relying on the Commission's Going Forward Order. ¹⁴ the

Cable Operators' Rate Justification Filings, DA 94-526, 9 FCC Rcd 7762 (Cab. Serv. Bur. 1994).

6 Id.

² Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994); see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan.20, 1995).

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), as amended, 47 U.S.C. § 543(c) (1993).

⁴ 47 C.F.R. § 76.956.

⁵ 47 C.F.R. § 76.956(b).

⁷ 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).

See 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 (1994) ("Second Order on Reconsideration"); 47 C.F.R. § 76.922(b).

⁹ See Second Order on Reconsideration, 9 FCC Rcd at 4190, paras. 150-152.

¹⁰ Id.

^{11 47} C.F.R. § 76.922(b)(6); see also Second Order on Reconsideration, 9 FCC Rcd at 4189 n.195.

¹² See , e.g. Multivision Cable TV, Prince Georges County, Maryland, LOI-93-15, DA 95-106 (Cab. Serv. Bur., released January 25, 1995).

¹³ See Century Cable TV, Huntington, West Virginia, LOI-93-49, DA 94-1314, 9 FCC Rcd 7337 (Cab. Serv. Bur. 1994); Century Cable TV, Morgantown, West Virginia, LOI-93-34, DA 94-1358, 10 FCC Rcd 115 (Cab. Serv. Bur. 1994); Century Cable TV, Muncie, Indiana, LOI-93-18, DA 94-1354, 10 FCC Rcd 99 (Cab. Serv. Bur. 1994); Century Cable TV, Owensboro, Kentucky, LOI-93-45, DA 94-1361, 10 FCC Rcd 127 (Cab. Serv. Bur. 1994); Century Cable TV, Yuma, Arizona, LOI-93-39, DA 94-1360, 10 FCC Rcd 123 (Cab. Serv. Bur. 1994); Century Cable TV, Brunswick, Georgia, LOI-93-44, LOI-94-4, DA 94-1426 (Cab. Serv. Bur., released Dec. 12, 1994); Cable TV of Greater San Juan, San Juan, Puerto Rico, LOI-93-38, DA 94-1425 (Cab. Serv. Bur., released Dec. 12, 1994).

¹⁴ 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, ¶ 51 (adopted November 10, 1994).

Bureau's orders addressed the restructured service offerings implemented in these communities beginning September 1, 1993, in which Century eliminated its CPS tiers and offered instead only a basic service tier and a few a la carte channels. In each of these orders, the Bureau found that Century's restructured service offerings do not constitute a clear evasion of our rate rules. Specifically, the Bureau found that Century 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 channels, the orders permit Century to treat its a la carte packages as new product tiers that may be priced at market levels under the Going Forward Order.

5. Since the LOI orders found that the elimination of Century's PCPS tiers did not constitute a clear evasion of rate regulation and those channels not placed on the basic service tier could be treated as a new product tier, there were no CPS tiers in those communities, as of September 1, 1993, that were subject to rate regulation pursuant to Section 76.922 of our rules. Therefore, the Bureau subsequently dismissed all FCC Form 329 complaints filed against Century in each of those seven communities. 15

III. DISCUSSION

- 6. The rate cards and channel line-up cards submitted by MultiVision for each of the subject communities indicate that MultiVision restructured its service offerings in the subject communities on September 1, 1993 in essentially the same way that Century did for the seven areas mentioned above where LOI orders have been issued. MultiVision discontinued its CPS offerings and placed all of its channels into a single basic service tier, except for five channels which it offered on an a la carte basis. Four of these channels (WTBS, TNT, The Nashville Channel and The Discovery Channel) were previously offered on Multivision's basic service tier; the fifth channel (The Sci-Fi Channel) was not available in these communities prior to September 1, 1993. 16
- 7. We feel that we have sufficient information regarding MultiVision's restructured offerings in the subject communities to conclude, in accord with the Going Forward Order, that they should be treated the same way that we treated Century's restructured offerings in the seven communities where we issued LOI orders. As in these latter communities, although the instant restructuring resulted in the elimination of Century's CPS tiers, the small number of channels that were offered in the a la carte packages did not constitute an evasion of our then existing rules. Therefore, consistent with the action taken in the LOI orders, we will allow MultiVision to treat its a la carte packages in the subject communities as new product tiers even though they would not qualify as new product tiers under the Going Forward Order because one of the conditions for a new product tier is that channels may not be removed from a basic service tier or a CPS tier. Thus, we need not rule on the FCC Form 329 complaints filed against MultiVision in

the subject communities because there were no CPS tiers 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 MultiVision's new product tiers violate any of the conditions for establishing those tiers outlined in the *Going Forward Order*. ¹⁷

IV. CONCLUSION

- 8. Accordingly, IT IS ORDERED that the a la carte packages created by ML Media Partners, L.P., Trading as MultiVision Cable TV in the communities listed in the attached Appendix may be treated as new product tiers under our Going Forward Order.
- 9. IT IS FURTHER ORDERED that all FCC Form 329 complaints pending against the CPS rates of ML Media Partners, L.P.,Trading as MultiVision Cable TV in each of the communities listed in the attached Appendix are DISMISSED.
- 10. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

See Century Cable TV, CUID Nos. IN0094, WV0156, WV0378, KY0120, AZ0019, DA 94-1422 (Cab. Serv. Bur., released Dec. 12, 1994); Cable TV of Greater San Juan, San Juan, Puerto Rico, CUID No. PR0001, DA 94-1530 (Cab. Serv. Bur., released Dec. 20, 1994); Century Cable TV, Brunswick, Georgia, CUID No.

GA0040, DA 94-1531 (Cab. Serv. Bur., released Dec. 20, 1994).

MultiVision also discontinued the Preview Guide Channel, which it had previously offered on the basic service tier.

¹⁷ 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.

APPENDIX

		8/31/93 Pre-Regulation Basic Tiers		9/1/93 Post Regulation Basic Tiers		
CUID	Community					on A la Carte
CA0305	Calistoga	16	18	29	0	5
CA0306	Cotati	16	18	29	0	5
CA0317	Sonoma	16	18	29	0	5
CA0318	Rohnert Park	16	18	29	0	5
CA0319	St. Helena	16	18	29	0	5
CA0619	Sebastopol	16	18	29	0	5