

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

In the Matter of CUID Nos. NJ0165 (West Orange),
NJ0221 (Bloomfield), NJ0249 (Westfield),
Suburban NJ0323 (Berkeley Heights), NJ0329
Cablevision (Woodbridge), NJ0350 (Perth Amboy),
NJ0369 (Fanwood)

Benchmark Filings to Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: April 25, 1995;

Released: May 2, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that Suburban Cablevision ("Operator") was charging for its cable programming service ("CPS") tier in the communities designated above.¹ 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 date we will issue a separate order addressing the reasonableness of the price after that date.²

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

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth on Appendix A. Operator filed FCC Form 393 in response: Operator has also filed amended and supplemental Form 393 filings, most recently on June 2, 1994.¹²

5. Operator asserts that its monthly CPS tier price is justified by its benchmark filing because its price is equal to the maximum permitted charge as calculated in the filing. Upon review of Operator's Form 393 filing, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustment to Operator's calculations in Form 393:

a. In its June 2, 1994 amended filing, Operator states that it calculated the Inflation Adjustment Factor (Form 393, Part II, Worksheet 1, Line 127, and Form 393, Part II, Worksheet 4, Line 401) using data it relied on when it set its CPS price. If Operator had done so correctly (i.e., if it had completed Form 393 with accurate data, including the most recent inflation data available as of the time it set its price), Operator would have successfully justified its prices under paragraph 94 of the *Third Order on Reconsi-*

¹ w P37IXP Operator was purchased by Comcast MH Holdings, Inc. subsequent to the time period covered by this Order. As required by the context, the term "Operator" as used in this Order includes Operator's successors in interest.

² 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 (1994) ("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*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable.

See 47 C.F.R. § 76.922(b)(4)(C).

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).

⁶ *Id.*

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).

⁸ 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 For example, Operator filed amended FCC Forms 393 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally. Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

deration.¹³ However, the figures Operator used are not consistent with data on which it should have relied in setting its CPS price.

b. According to Operator's amended filing, Operator calculated this price prior to September 1, 1993. Operator used the Gross National Product Index ("GNP-PI") data released by the U.S. Department of Commerce on May 28, 1993, to complete Lines 122, 123, and 125, but Operator claimed an Adjustment Time Period extending through October 1993 (Line 124), which is inconsistent with an attempt to justify rates based on May 1993 data.

c. We must therefore recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the date for which Operator filed.¹⁴ On its amended Form 393, Operator entered 13 months on Line 124, indicating that its filing was as of the end of October 1993. On July 29, 1994, the Department of Commerce released corrected inflation data including GNP-PI figures to these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operator used in justifying its rates, of 1.030.

6. Upon review of the record herein, and having incorporated the adjustment discussed above, we conclude that Operator has failed to justify the rate it was charging during the periods in question. Operator's showing justifies the maximum reasonable CPS tier prices shown on Appendix B (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth in Appendix A) to May 14, 1994.¹⁵ However, we further determine that the total overcharge per subscriber in CUID Nos. NJ0249 and NJ0323 is *de minimis*. Therefore, it would not serve the public interest to order a refund in these communities.

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referred to in Appendix A against the cable programming service price charged by Operator in the areas referenced in the caption and at Appendix A herein, and all other complaints in these franchise areas related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the communities shown in Appendix B except for CUID Nos. NJ0249 and NJ0323 that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)¹⁶ to May 14, 1994 which exceeded the maxi-

mum price for each franchise area set forth in Appendix B (plus franchise fee) per month, plus interest to the date of the refund.

9. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

10. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in each franchise area set forth in Appendix B (plus franchise fee).¹⁷

11. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

12. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS prices in the franchise areas addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith optional supplemental filings in response to our *Public Notice*.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

¹³ *Third Order on Reconsideration*, MM Docket Nos. 92-266 and 92-262, FCC 94-40, 9 FCC Rcd 4316 (1994) ("*Third Order on Reconsideration*").

¹⁴ See 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

¹⁵ This finding is based solely on the representations of Operator and the modifications described herein. 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.

¹⁶ Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission, 47 C.F.R. § 76.961(b).

¹⁷ We reserve the right to make further adjustments to Operator's prices for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filings.

Appendix A

CUID No.	Date-First Complaint Filed with FCC	Date Complaint Served
NJ0165	11/29/93	11/23/93
NJ0221	10/13/93	10/05/93
NJ0249	02/04/94	01/31/94
NJ0323	01/27/94	01/25/94
NJ0329	12/27/93	12/22/93
NJ0350	11/15/93	10/01/93
NJ0369	10/20/93	10/15/93

Appendix B

CUID No.	Actual Rates	Maximum Permitted Rates
NJ0165	\$11.75	\$11.64
NJ0221	\$11.75	\$11.64
NJ0249	\$11.75	\$11.64
NJ0323	\$11.75	\$11.64
NJ0329	\$11.75	\$11.64
NJ0350	\$11.75	\$11.64
NJ0369	\$11.75	\$11.64