

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

In the Matter of)	
)	
Triax Associates I, L.P.)	
)	
Small System Filing to Support)	CUID No. MI 1790 Howell
Township)	
Cable Programming Services)	
Tier Rates and Basic Service)	
Tier Rates)	

ORDER

Adopted: July 29, 1996

Released: August 16, 1996

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

1. In this Order we consider a complaint filed on November 3, 1993 regarding the rate that Triax Associates I, L.P. ("Triax") was charging for its cable programming service tier ("CPST") in the franchise area referenced above. Additionally, on October 10, 1994, the Township of Howell ("Township")¹ petitioned the Federal Communications Commission ("Commission"), requesting assistance in reviewing the Basic Service Tier ("BST") cost of service showing filed by Triax on December 20, 1993². The Commission granted the Township's request on April 28, 1995, and agreed to review Triax's BST cost of service filing.³

2. On November 5, 1995, Triax filed FCC Form 1230s, seeking to justify its CPST and BST rates through the simplified small system cost of service procedures under the Commission's *Small System Order*.⁴ In this Order we grant Triax's request for small system relief under the *Small System Order* and, based on our review of Triax's FCC Form 1230 filings, deny the pending CPST complaint and find the CPST and BST rates to be not unreasonable.

¹ See Petition for Special Relief, Township of Howell, filed October 10, 1994 wherein the Township asserted it lacks the resources and adequately trained personnel necessary to conduct the BST cost of service review.

² See Third Order on Reconsideration in MM Docket Nos. 92-266 and 92-262 ("*Third Recon. Order*"), 9 FCC 4316, 4338-39 (1994) (authorizing requests by local franchising authorities for assistance in reviewing cost of service showings for basic tier rates); 47 C.F.R. § 76.933(d).

³ See Letter dated April 28, 1995 from Jacqueline Spindler, Deputy Chief, Financial Analysis and Compliance Division, to Patrick Miles Jr., Esq., attorney for the Township of Howell.

⁴ Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266 & 93-215, 10 FCC Rcd 7393 (1995) ("*Small System Order*"). Triax initially filed FCC Form 1220 on December 20, 1993 to justify its rates, however, those forms are superseded by the later filed FCC Form 1230.

3. Under the Cable Television Consumer Protection and Competition Act of 1992, and the Commission's rules implementing it, the Commission must review a cable operator's rates for its CPST upon the filing of a valid complaint.⁵ The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPST rates. Additionally, once a franchising authority has been certified by the Commission, the cable operator is required to file a justification of its BST rate with the franchising authority.⁶ Under the Commission's rules, an operator may attempt to justify its CPST and BST rates through a benchmark showing, a cost of service showing, or a small system cost of service showing. In any case, the operator has the burden of demonstrating that its rates are not unreasonable.⁷

4. Under cost of service regulation a cable system's rates are reviewed under traditional rate of return analysis. Cost of service regulation imposes heavy burdens upon regulators and the regulated entity because of the significant administrative and compliance costs associated with this regulatory model.⁸ The Commission recognized that some local franchising authorities may have resources and personnel sufficient to conduct a review of the rate-setting justification based on the benchmark approach but not to examine a cost of service showing. The Commission also understood that this concern may have discouraged certification by many local franchising authorities.⁹ Therefore, it established procedures under which the Commission, if requested by the local franchising authority in a petition for special relief under Section 76.7 of the Commission's rules, will issue a ruling that makes cost determinations for the BST.¹⁰

5. The Commission's original rate regulations took effect on September 1, 1993. The Commission subsequently revised its rate regulations effective May 15, 1994.¹¹ In a further effort to offer small cable companies administrative relief from rate regulation, the Commission amended the definition of small cable companies and small systems and introduced a simplified form of small system rate relief in the *Small System Order*. Cable systems serving 15,000 or fewer subscribers, and owned by a company having 400,000 or fewer subscribers, may elect to

⁵ Pub. L. No. 102-385, §§ 3, 9, 14, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act § 623(c), as amended, 47 U.S.C. § 543(c)(1993).

⁶ 47 C.F.R. §§ 76.930 and 76.933.

⁷ 47 C.F.R. §§ 76.956(d) and 76.934.

⁸ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 ("Rate Order").

⁹ *Id.*

¹⁰ *Third Recon. Order*, 9 FCC Rcd at 4338.

¹¹ *Id.*; see also 47 C.F.R. § 76.933(d).

use the new small cable system rate mechanism in lieu of other Commission rate processes, provided the Commission has not reached a final resolution on the rate complaints filed against the system. Operators attempting to justify their rates through small system relief must file FCC Form 1230. If the maximum rate established on FCC Form 1230 does not exceed \$1.24 per channel, the rate shall be presumed reasonable.

6. On November 5, 1995, Triax filed FCC Form 1230s seeking to justify its CPST and BST rates through the simplified small system cost of service procedures under the Commission's *Small System Order*. We find that Triax is a company with fewer than 400,000 total subscribers and that the system in question serves fewer than 15,000 subscribers, making it eligible for small system relief. Further, Triax's filing shows that its actual rate per channel for regulated cable service (FCC Form 1230, Line A11) does not exceed its per subscriber, per channel monthly programming costs (FCC Form 1230, Line A6). We, therefore, find the rates to be not unreasonable.¹²

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Triax's request for small system relief is GRANTED.

8. IT IS FURTHER ORDERED that the BST rate charged by Triax during the period under review with respect to the above-referenced CUID number IS JUSTIFIED.

9. IT IS FURTHER ORDERED, pursuant to Section 76.933(d) of the Commission's Rules, 47 C.F.R. § 76.933(d), that this decision is binding on the local franchising authority, the Township of Howell, Michigan and the cable operator, Triax Associates I, L.P.

10. IT IS FURTHER ORDERED that the CPST rate charged by Triax during the period under review for the above-referenced CUID number IS JUSTIFIED.

¹² 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.

11. IT IS FURTHER ORDERED that the complaint against the CPST rate charged by Triax during the period under review with respect to the above-referenced CUID number IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth W. Beaty
Chief, Financial Analysis and Compliance Division
Cable Services Bureau