

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

In the Matter of:)
)
Annual Rate Adjustment System)
for Cable Service Rates)
)
Request for Waiver of Requirements)
Contained in the *Thirteenth Order on)
Reconsideration*)

ORDER

Adopted: August 8, 1996

Released: August 8, 1996

By the Chief, Cable Services Bureau:

INTRODUCTION

1. On July 16, 1996, Tele-Communications, Inc. ("TCI") requested a waiver¹ of certain rate adjustment requirements contained in the *Thirteenth Order on Reconsideration* ("Order").² In the *Order*, the Commission created a new, annual rate adjustment system for modifying cable services rates regulated pursuant to Section 623 of the Cable Consumer Protection and Competition Act of 1992 ("1992 Cable Act").³

BACKGROUND

2. Under the 1992 Cable Act, cable rate regulation is undertaken jointly by the Commission and by local franchising authorities ("LFAs"). For purposes of allocating regulatory responsibility over the rates for services offered by cable system operators, the 1992 Cable Act divides regulated cable services into two categories.

3. The first category is the basic service tier ("BST"), which includes, at a minimum, the local broadcast signals distributed by the cable operator and any public, educational, and

¹ Letter from TCI to Meredith J. Jones (July 16, 1996).

² MM Docket 92-266, 60 Fed. Reg. 52106 (Oct. 5, 1995).

³ Cable Television Consumer Protection and Competition Act ("1992 Cable Act"), Pub. L. No. 102-385, 106 Stat. 1460 (1992), Sections 623(b), (c) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 543(b), (c). The 1992 Cable Act amended the Communications Act, which has been further amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

governmental access channels.⁴ Regulation of rates for BSTs is the responsibility of certified LFAs, pursuant to standards and procedures established by the Commission.⁵ The second category are cable programming service tiers ("CPSTs"), which include all video programming distributed over the system that is not on the BST and for which the operator does not charge on a per channel or per program basis.⁶ Under the 1992 Cable Act, CPSTs were subject to regulation by the Commission only if the Commission received a complaint from a subscriber or local regulatory authority regarding an operator's CPST rate.⁷ The Telecommunications Act of 1996 requires that a CPST complaint be filed by an LFA after it receives subscriber complaints.⁸

4. Pursuant to the 1992 Cable Act's rate regulation requirements, we established a system of rate regulation to set initial BST and CPST rates that ensures subscribers pay reasonable rates for regulated cable services. The Commission also adopted a price cap approach to govern how operators can adjust their rates on a going forward basis following the establishment of initial rates. Under the original price cap approach ("quarterly rate adjustment system"), operators adjust their rates to reflect changes in external costs and changes in the number of regulated channels up to four times per year. Operators make these rate adjustments by filing an FCC Form 1210.

5. After gaining experience with the quarterly rate adjustment system, the Commission adopted a new optional rate adjustment methodology where cable operators make only annual rate changes to their BSTs and CPSTs. The annual rate adjustment has two components. The first component is based on an operator's projected costs and the second component is based on costs that an operator has actually incurred. According to the *Order*, operators that elect to use this optional methodology will adjust their rates once per year based on a maximum permitted rate that accounts for reasonably certain and reasonably quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the 12 months following the rate change. In addition, a "true up" mechanism is available to correct differences between the revenues the operator collected and the actual cost changes that occurred during the preceding 12 month period. If an operator has not recovered the actual costs it incurred, the operator is permitted to add the cost to rates at a later time, with interest. The true up requires operators to return to subscribers any overcharges that occurred, with interest.

⁴ 47 C.F.R. § 76.901(a).

⁵ Communications Act, § 623(a)(2)(A). Under certain circumstances, the Commission will directly regulate BST rates, 47 C.F.R. § 76.944(a).

⁶ Communications Act, § 623(l)(2).

⁷ Communications Act, § 623(c)(3).

⁸ See Telecommunications Act of 1996, § 301(b); 47 U.S.C. § 543(c) regarding upper tier rate regulation.

6. Annual adjustments are justified on an FCC Form 1240 ("Form 1240"). Regulated operators using the annual methodology that seek to adjust rates on the BST must file Form 1240 with local franchising authorities a minimum of 90 days before the rate adjustment is scheduled to go into effect, and with the Commission a minimum of 30 days before a CPST rate adjustment is scheduled to go into effect. BST and CPST rate increases must be scheduled to take effect at the same time.⁹

WAIVER REQUEST

7. TCI chose to use the annual rate adjustment option on all of its rate regulated systems, and has obtained a uniform implementation date for all such systems. On or about March 1, 1996, TCI submitted its first-time Form 1240 filings to the LFAs for its rate regulated systems in order to effectuate a BST rate adjustment implementation date of June 1, 1996. Similarly, Viacom Cable ("Viacom") chose to use the annual rate adjustment option on all of its rate regulated systems, and has likewise obtained a uniform implementation date for all such systems. On or about June 1, 1996, Viacom submitted its first-time Form 1240 filings to the LFAs for its rate regulated systems to effectuate an expected BST rate adjustment implementation date of September 1, 1996.¹⁰ On July 31, 1996, TCI acquired Viacom's cable systems, which had approximately 1.2 million subscribers, increasing TCI's total subscribership of approximately 12 million by approximately 7%.

8. In anticipation of the consummation of the acquisition, on July 16, 1996, TCI filed a request for a waiver of the Commission's rules to permit TCI to obtain a uniform date for implementing BST and CPST rate adjustments on its regulated systems and the Viacom cable systems TCI expected to acquire on July 31.¹¹ TCI proposed to amend Viacom's June 1, 1996, Form 1240 filings using TCI's projected costs, and to spread the cost increases reflected in the amended Form 1240 over a period ending May 31, 1997.¹² TCI asked that it be allowed to use a nine month projected cost period as opposed to a 12 month projected period in filings for BST and CPST rates for the Viacom systems in order to align future adjustment dates for TCI systems and the Viacom systems to be acquired by TCI.¹³ Specifically, TCI requests a waiver with respect to filings for Viacom systems in 1996 of the Commission's rules that require an operator (i) to project costs for the 12 month period following the date the operator is scheduled to make

⁹ See *Order* at ¶¶ 92-104 for a more detailed explanation of filing requirements.

¹⁰ Attached is a list of the franchise areas where Viacom has filed Form 1240 which are the subject of TCI's waiver request.

¹¹ TCI letter at 3-4. In addition to the TCI letter, TCI and members of the Cable Services Bureau participated in phone conversations on July 31, 1996, and August 1, 1996, regarding the waiver request.

¹² TCI letter at 3.

¹³ TCI letter at 2.

its rate adjustment (47 C.F.R. §76.922(e)(2)); (ii) to wait at least 12 months between implementation of annual Form 1240 rate adjustments (47 C.F.R. §76.922(e)(1); and (iii) to use an official Commission form to change tier rates (47 C.F.R. §76.922(f), 76.930 and 76.956(a)).

9. TCI submits that eliminating the disparity between its regulated tier rate adjustment implementation date (June 1) and the originally proposed Viacom rate adjustment implementation date (September 1) will help avoid subscriber confusion, particularly in areas where the TCI and formerly Viacom franchises are adjacent or where the same LFA regulates both TCI and formerly Viacom systems.¹⁴ Additionally, TCI states that it plans to use the Form 1240 on an annual basis for future rate adjustments, and argues that a waiver would reduce administrative burdens for those communities that regulate both TCI and formerly Viacom systems, because this one-time waiver would hereafter allow Form 1240s to be filed at the same time each year, and Form 1240s would thus include the same basic cost information.¹⁵ TCI states that since its programming costs are generally lower than Viacom's programming costs, the amendment to the Viacom forms will result in lower rates for some customers that subscribe to the formerly Viacom systems on the proposed implementation date than would be the case if the original Viacom filings were maintained. In addition, if the amended Form 1240 BST rate is higher than the rate that would have been obtained under the Viacom Form 1240s, TCI states that it will implement the lower Viacom Form 1240 BST rate for such BSTs.¹⁶ If an LFA's review of a Viacom Form 1240 finds that, for example a lower assumption (for example, an inflation factor) should have been used, the lower assumption will be applied to the Viacom Form 1240 and to TCI's amended Form 1240 filing rate, without a separate review by the LFA of the assumption used in TCI's amended Form 1240. The lower rate will then be used.

DISCUSSION

10. The 1992 Cable Act directed the Commission to "seek to reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission" in meeting its mandate of creating regulations that ensure that subscriber rates for regulated services are not unreasonable.¹⁷ The Commission created the annual rate adjustment system in order to streamline the rate review process in a way that benefits subscribers, cable operators and local regulatory authorities. Annual adjustments limit subscriber confusion and frustration because subscribers do not have to contend with numerous rate adjustments each year. Regulatory authorities also benefit because the annual system minimizes the amount of rate adjustments reviewed each year.

¹⁴ TCI letter at 2.

¹⁵ TCI letter at 3; facsimile from TCI to Nancy Stevenson (August 8, 1996).

¹⁶ TCI letter at 3; TCI telephone meeting July 31, 1996.

¹⁷ Communications Act, § 623(b)(2)(A).

11. Upon review of the facts and circumstances present in this case, and in conjunction with certain conditions which we impose, we believe good cause exists to grant TCI's request for a waiver of the Commission's rules so as to permit TCI the ability to implement regulated rate adjustments on the formerly Viacom cable systems at the same time it implements its TCI annual BST and CPST Form 1240 rate adjustments. We believe that in this case a waiver of our rules will provide benefits to both subscribers and LFAs. We note that there are approximately 1.2 million subscribers in the franchise areas acquired by TCI from Viacom and that a "substantial majority" of the acquired Viacom systems are in franchise areas that are either adjacent to or shared with TCI systems. We believe that TCI's proposal to conform the timing of regulated tier rate adjustment schedules for subscribers in these areas will avoid undue subscriber confusion for a significant number of subscribers nationwide in the future.

12. The affected LFAs will also benefit. Absent a waiver allowing a single amended Form 1240 filing with a nine month projected period, in order to align the BST rate adjustment dates of the formerly Viacom systems with those of the historically owned TCI systems without postponing all rate increases for the nine month period, TCI would be required to withdraw the Form 1240s filed by Viacom and file in their place two quarterly adjustments forms (on FCC Form 1210) to recover cost increases. This alone would place additional burdens on the LFAs due to the increase in the number of rate filings that would require rate review and would impose an additional round of increases on subscribers. Also, conforming TCI's newly-acquired Viacom cable systems' annual rate adjustment schedule to TCI's cable systems' annual rate adjustment schedule will result in the same projected periods for the systems, thereby streamlining rate reviews for LFAs that regulate both TCI and formerly Viacom franchises because the cost information for the same projected periods would be substantially similar. Fewer rate adjustments and streamlined rate reviews are part of the overall goal of the annual rate adjustment system. We also take note of the fact that both TCI and Viacom had attempted to put in place a uniform rate adjustment schedule across their regulated systems by aligning the filing deadlines for all of their cable systems. The efficiencies of such a practice will be lost for both TCI and Viacom if both cable systems, now operating as one, are required to have two separate rate adjustment schedules.

13. Additional benefits will transpire to subscribers and the LFAs. TCI will be required to charge the lower of Viacom's Form 1240 BST rate or TCI's amended Form 1240 BST rate. Thus, Viacom subscribers will pay the same as or less over the projected period than they would if the waiver was not granted and the Viacom filings were left in place. TCI estimates that the Viacom subscribers will pay approximately \$160,000 less over the projected period if the lowest BST rates are used from Viacom's Form 1240 or TCI's amended Form 1240 than if the Viacom filings were left in place.¹⁸ Further, as a condition of the grant of this waiver request, TCI may not in future rate adjustments seek a true-up for any amount it forgoes on a BST rate because of the selection of a lower Viacom rate for the period to June 1, 1997.

¹⁸ Letter to Nancy Stevenson from Willkie Farr & Gallagher (August 5, 1996).

14. TCI submitted an amended version of FCC Form 1240 with its July 16, 1996 waiver request. TCI states that this amended version is for a one-time use for its newly acquired Viacom cable systems, for the purpose of aligning Viacom's Form 1240 (June 1) regulated rate filings with TCI's Form 1240 (March 1) filings.¹⁹ The amended version is designed to permit implementation of the next rate adjustment for the Viacom cable systems (subject of the instant waiver request) to occur on June 1, 1997. We have reviewed TCI's version of Form 1240, and find that it accurately carries out the objectives of achieving conforming time schedules for regulated tier rate adjustments for the formerly Viacom cable systems and the TCI cable systems.

15. Given the totality of the above described circumstances, we find good cause to grant a waiver of our rules to allow TCI to align the formerly Viacom cable systems' rate adjustment schedule with TCI's cable systems' rate adjustment schedule. We believe a significant subscriber base, as well as the affected LFAs, will benefit by conforming the filing dates of the two rate adjustment schedules. We did not receive any formal opposition in response to our public notice of TCI's waiver request.²⁰ Several communities served by the formerly Viacom systems acquired by TCI wrote informally to the Commission to express their support of TCI's waiver request.²¹

16. Accordingly, in order to allow a one-time projected period of nine months for regulated rate adjustments for cable systems TCI acquired from Viacom, we grant TCI's requested waiver of our rules that require a projected period of at least 12 months.²² Specifically, we waive the requirement of 47 C.F.R. Section 76.922(e)(2) (the projected period in the Form 1240 covers "the twelve months following the date the operator is scheduled to make its rate adjustment"), and the requirement of 47 C.F.R. Section 76.922(e)(1) ("at least twelve months must pass before an operator can implement its next annual adjustment"). We also waive the requirements under 47 C.F.R. §76.922(f), 76.930 and 76.956(a) (which require the use of official FCC Forms to effectuate regulate tier rate changes). This waiver applies to the Form 1240 projected period for both BST and CPST rate adjustments for cable systems TCI acquired from Viacom. We will permit TCI to use this amended version of Form 1240, for a one-time

¹⁹ TCI letter at 3.

²⁰ See FCC Public Notice, Report No. 1084 (July 19, 1996).

²¹ See Letter to the Federal Communications Commission from King County (July 10, 1996), Letter to the Federal Communications Commission from the City of Dayton (July 11, 1996), Letter to the Federal Communications Commission from the Rainier Cable Commission (July 12, 1996), Letter to the Federal Communications Commission from the City of Livermore (July 12, 1996), Letter to the Federal Communications Commission from the City of Dublin (July 15, 1996) Letter to Meredith J. Jones from the City of Seattle (July 17, 1996).

²² See 47 C.F.R. § 1.3 (Commission may waive any of its rules for good cause shown).

projected period of nine months for these acquired systems.²³ This waiver applies solely to Viacom systems acquired by TCI, and is a one time waiver. TCI's subsequent filings shall not reflect a projected period of less than 12 months.

ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that the Tele-Communications, Inc. waiver request **IS GRANTED**.

18. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

²³ We have previously approved TCI's request to use its own computer generated form 1240 (*See* Letter from Gary Laden to Richard D. Treich (February 27, 1996)). In order to implement the one time, nine month projected period, TCI has modified their approved form 1240. We have examined the modification to TCI's form 1240, and hereby approve the modified TCI form 1240.

ATTACHMENT

<u>System</u>	<u>CUID</u>	<u>Franchise Authority</u>
Tri-Valley	CA0353	City of Dublin
	CA0354	Contra Costa County
	CA0356	City of Livermore
	CA0360	City of Pleasanton
	CA0364	Alameda County-Sunol
	CA1115	City of San Ramon
Castro Valley	CA0238	Alameda County
Pittsburg	CA0351	City of Antioch
	CA0359	City of Pittsburg
	CA0365	Contra Costa County-Bay Point
Pinole	CA0070	Contra Costa County-San Pablo
	CA0075	Contra Costa County-Crockett
	CA0924	Contra Costa County-Rodeo
Marin	CA0050	Town of Fairfax
	CA0051	City of Mill Valley
	CA0052	Town of San Anselmo
	CA0054	Town of Tiburon
	CA0166	City of Sausalito
	CA0168	City of Sausalito
	CA0352	Town of Corte Madera
	CA0355	City of Larkspur
	CA0361	Town of Ross
	CA0362	City of San Rafael
	CA0363	Marin County
	CA0527	City of Belvedere
	CA1518	Town of Tiburon
Healdsburg	CA0111	City of Healdsburg
	CA1513	Town of Windsor
Napa	CA0407	City of Napa
Salem	OR0057	City of Salem
	OR0195	Marion County

ATTACHMENT

<u>System</u>	<u>CUID</u>	<u>Franchise Authority</u>
Puget Sound-North	WA0013	City of Mukilted
	WA0029	City of Sultan
	WA0038	City of Monroe
	WA0191	Oak Harbor
	WA0204	City of Lynnwood
	WA0228	City of Mountlake Terrace
	WA0325	City of Brier
	WA0396	City of Mill Creek
	WA0548	City of Marysville
Puget Sound-Central	WA0076	City of Bellevue
	WA0110	Mercer Island
	WA0111	King County-Sheridan Beach
	WA0112	City of Seattle
	WA0118	King County-Comm Telecable
	WA0148	City of Bellevue
	WA0150	King County-Vista
	WA0151	City of Redmond
	WA0160	City of Lake Forest Park
	WA0310	City of Kirkland
	WA0330	City of Bellevue
Puget Sound-South	WA0041	City of Fircrest
	WA0043	City of Milton
	WA0049	City of Puyallup
	WA0050	City of Sumner
	WA0180	Pierce County
	WA0181	King County-Lee Hills
	WA0245	Town of Steilacoom
	WA0262	City of Tacoma
	WA0308	City of Bonney Lake
	WA0403	City of Dupont
	WA0405	City of Yelm
	WA0413	King County-Vashon Island
	WA0423	Town of Carbonado
	WA0552	Pierce County-Bonney Lake
	WA0554	City of Federal Way
Dayton	OH0453	City of Dayton
Nashville	TN0148	City of Nashville