

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

In the Matter of)	
)	
TCI Cablevision of Washington, Inc.)	CUID No. WA0008 (City of Olympia)
)	
)	
Complaint Regarding)	
Cable Programming Services)	
Rate Increase)	

ORDER

Adopted: September 25, 1996

Released: September 25, 1996

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider complaints regarding the rate increases of TCI Cablevision of Washington, Inc. ("TCI") for its cable programming services tier ("CPST") in the City of Olympia, Washington CUID No. WA0008. TCI increased its CPST rate on April 1, 1995 in the amount of \$0.98 and on March 1, 1996 in the amount of \$2.03. TCI has chosen to attempt to justify its CPST rates through benchmark showings on FCC Form 1200, and multiple FCC Form 1210s.¹

2. Under the Communications Act,² the Federal Communications Commission ("Commission") is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. If the Commission finds the rate unreasonable, it shall determine the correct rate and any refund liability.³ The Telecommunications Act of 1996⁴ and our rules implementing the new legislation,⁵ changed the

¹ TCI filed separate FCC Forms 1210 for rebuilt areas in the system and for areas not yet rebuilt. For the non-rebuild areas TCI filed a FCC Form 1210 reflecting changes over the period April 1, 1994 to March 31, 1995. For the rebuild areas TCI filed a FCC Form 1210 reflecting changes over the period April 1, 1994 to September 30, 1994 and a second FCC Form 1210 reflecting changes over the period October 1, 1994 to March 31, 1995.

² Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c)(3)(1996).

³ *Id.*

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996) ("the 1996 Act").

⁵ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, FCC 96-154 (released April 9, 1996) ("Interim Rules").

process by which the Commission reviews complaints concerning rates charged for a CPST. Under the 1992 Cable Act⁶ and our rules implementing it, subscribers, franchising authorities, or other relevant state or local government entities were permitted to file complaints concerning CPST rates directly with the Commission.⁷ Under the 1996 Act and our Interim Rules implementing the new legislation, complaints against the CPST rates may only be filed with the Commission by a franchising authority that has received subscriber complaints.⁸ The Commission has received a valid complaint triggering our jurisdiction under the 1992 Cable Act regarding TCI's CPST rate increase implemented on April 1, 1995.⁹ Additionally, the Commission has received a valid complaint triggering our jurisdiction under the 1996 Act with respect to TCI's March 1, 1996 CPST rate increase.¹⁰

3. The Commission's original rate regulations took effect on September 1, 1993.¹¹ The Commission subsequently revised its rate regulations effective May 15, 1994.¹² Cable operators with valid CPST complaints filed against them prior to May 15, 1994 must demonstrate that their CPST rates were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their rates were in compliance with the revised rules from May 15, 1994 forward.¹³ Cable operators attempting to justify their rates for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.¹⁴ Generally, to justify their rates for the period beginning May 15, 1994 through a

⁶ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷ 47 C.F.R. Section 76.950.

⁸ See Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c)(3) (1996); and 47 C.F.R. Section 76.1402.

⁹ The Commission received one valid complaint which was filed on May 15, 1995 against TCI's April 1, 1995 CPST rate increase.

¹⁰ The City of Olympia, the local franchising authority, has certified that it has received more than one complaint against TCI's March 1, 1996 CPST rate increase within 90 days of the date of the increase first appearing on the subscribers' bills. Additionally, the City of Olympia certified that it has served TCI with the complaint. See FCC Form 329 filed by the City of Olympia on June 27, 1996.

¹¹ 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).

¹² 47 C.F.R. Section 76.922(b); *see also* 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, 4190 (1994) ("*Second Order on Reconsideration*").

¹³ *Id.*

¹⁴ *Id.*

benchmark showing, operators must use the FCC Form 1200 series.¹⁵ Cable operators may also justify rate increases based on the addition and deletion of channels, changes in certain external costs, and inflation, by filing FCC Form 1210.¹⁶ FCC Form 1210 must be filed at least 30 days before new rates are scheduled to go into effect where the Commission has found the cable programming service rate to be unreasonable less than one year prior to the filing, or where there is a pending complaint against the CPST rate.¹⁷

4. In response to the complaint against TCI's rate increase effective April 1, 1995 in the non-rebuild areas of the franchise, TCI asserts that its monthly CPST rate from April 1, 1995 is justified because the rates are equal to or lower than the maximum permitted charge. Upon review of TCI's FCC Form 1200 and FCC Form 1210 filing for the non-rebuild areas, we have found no apparent errors that would result in TCI's actual CPST rate exceeding its maximum permitted CPST rate.¹⁸ Therefore, TCI's CPST rates for period under review in the non-rebuild areas is justified.

5. In response to the complaint against TCI's CPST rate increase effective March 1, 1996 in rebuilt areas of the franchise, TCI asserts that the increase is justified. Upon review of TCI's FCC Forms 1210 related to the rebuilt areas, however, we find that TCI has incorrectly calculated its maximum permitted rate. Specifically, TCI included inflation adjustments that had expired in its March 1, 1996 rate.¹⁹ Accordingly, we have adjusted TCI's maximum permitted rate calculation to exclude the inflation adjustment. As a result of this adjustment, we have calculated a maximum permitted rate for TCI's CPST of \$12.65, and we find that TCI has not justified the full increase included in its March 1, 1996 rates. The adjustment to the maximum permitted rate results in a \$0.13 per month overcharge for the period March 1, 1996 through

¹⁵ 47 C.F.R. Section 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n. 195.

¹⁶ 47 C.F.R. Section 76.922(d).

¹⁷ 47 C.F.R. Section 76.960; *see also Second Order on Reconsideration*, 9 FCC Rcd at 4190.

¹⁸ This finding is based solely on the representations of TCI. 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.

¹⁹ Operators are allowed to include inflation adjustments in rates by August 31 of the year following the period over which inflation has occurred and for which an adjustment is allowed. In this instance TCI included inflation for the period October 1, 1992 through June 30, 1994 in its calculation of the rate increase made effective on March 1, 1996. Under Commission rules, TCI had until August 31, 1995 to include the allowable inflation for that period in its rate. *See* 47 C.F.R. Section 76.922(d)(2).

May 31, 1996.²⁰ We determine, however, that the total overcharge per subscriber is *de minimis*. Therefore, it would not serve the public interest to order a refund.

6. Accordingly, IT IS ORDERED, that the CPST rate charged by TCI Cablevision of Washington in CUID No. WA0008, City of Olympia, Washington from April 1, 1995 to February 28, 1996 IS NOT UNREASONABLE.

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaint referenced herein with respect to the City of Olympia, Washington, CUID No. WA0008, against the April 1, 1995 CPST rate increase charged by TCI Cablevision of Washington IS DENIED.

8. IT IS FURTHER ORDERED that the monthly CPST rate increase of \$2.03 charged by TCI Cablevision of Washington in CUID No. WA0008, City of Olympia, Washington IS UNREASONABLE and that TCI shall adjust its maximum permitted rates for CPST to exclude the inflation for the period October 1, 1992 through June 30, 1994.

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaint referenced herein with respect to the City of Olympia, Washington, CUID No. WA0008, against the March 1, 1996 CPST rate increase charged by TCI Cablevision of Washington IS GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

John E. Logan
Deputy Chief, Cable Services Bureau

²⁰ According to a letter from the the City of Olympia, dated June 24, 1996, the rate put into effect on March 1, 1996 was changed on June 1, 1996. The City of Olympia stated that it will be filing a FCC Form 329 complaint against the rate made effective on June 1, 1996.