

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

In the Matter of	)	
	)	
TeleScripps Cable Company	)	CUID No. KY0640
	)	(Hardin County)
	)	
Complaint Regarding	)	
Cable Programming Services Tier	)	
Rates	)	

**ORDER**

**Adopted: November 6, 1996**

**Released: November 7, 1996**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a complaint about the rate increase TeleScripps Cable Company ("TeleScripps") implemented for its cable programming services tier ("CPST") on February 1, 1996 in the community referenced above. TeleScripps has chosen to justify its rates through benchmark showings on FCC Form 1210 for the period ending in the first quarter of 1996. This Order addresses the reasonableness of TeleScripps's February 1, 1996 CPST rate increase, and finds the increase to be unreasonable.

2. Under the Communications Act,<sup>1</sup> 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.<sup>2</sup> The Telecommunications Act of 1996<sup>3</sup> and our rules implementing the new legislation,<sup>4</sup> require that complaints against the CPST rates be filed with the Commission by a local franchising authority ("LFA") that has received subscriber complaints. An LFA may not file a CPST rate complaint unless, within 90 days after such increase becomes effective, it receives subscriber complaints.

<sup>1</sup> Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c)(3) (1996).

<sup>2</sup> *See* 47 U.S.C. Section 543(c) (1996).

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996) ("1996 Act").

<sup>4</sup> *See* Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 ("Interim Rules").

This standard requires more than one subscriber rate complaint. The provisions under the 1996 Act became effective upon its enactment on February 8, 1996.<sup>5</sup>

3. The Commission's original rate regulations took effect on September 1, 1993.<sup>6</sup> The Commission subsequently revised its rate regulations effective May 15, 1994.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> Generally, to justify their rates for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.<sup>10</sup> 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.<sup>11</sup> 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 tier rate to be unreasonable less than one year prior to the filing, or where there is a pending complaint against the CPST rate.<sup>12</sup>

4. Hardin County ("The County") filed a complaint on July 30, 1996 regarding the February 1, 1996 increase in TeleScripps' CPST rate in the above-referenced community.<sup>13</sup>

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<sup>5</sup> See Communications Act, Section 623(c), as amended, 47 U.S.C. Section 543(c)(3) (1996).

<sup>6</sup> 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).

<sup>7</sup> 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*").

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. Section 76.922(b)(6); see also *Second Order on Reconsideration*, 9 FCC Rcd at 4189 n. 195.

<sup>11</sup> 47 C.F.R. Section 76.922(d).

<sup>12</sup> 47 C.F.R. Section 76.960; see also *Second Order on Reconsideration*, 9 FCC Rcd at 4190.

<sup>13</sup> See Letter dated August 1, 1996 from Mr. Frederic J. Cowan, Esq., Attorney for Hardin County to A. Cunningham, Cable Services Bureau Attorney/Advisor, confirming that although some of the FCC Forms submitted with the July 30, 1996 complaint filed by the LFA with the Commission referred to CUID No. KY0107, the complaint relates to KY0640.

Section 623 of the Communications Act, as amended by the Telecommunications Act of 1996,<sup>14</sup> requires the Commission to review any complaint submitted by a franchising authority concerning an increase in rates for cable programming services and issue a final order within 90 days after it receives such complaint, unless the parties agree to extend the period for such review. In a joint telephone conference and through letters of confirmation, taking place between October 23 and October 25, 1996, TeleScripps and Hardin County agreed to toll the 90 day review period for an additional ten days, until November 7, 1996.<sup>15</sup> The decision to toll was based upon information provided by Commission staff regarding discrepancies in FCC Forms 1210 filings, information provided by TeleScripps relating to a change in rates; and upon Commission staff inquiry regarding compliance with the Interim Rules<sup>16</sup> as they relate to the filing of complaints.<sup>17</sup>

5. In its July 30, 1996 complaint regarding the February 1, 1996 increase, the County certifies that it has received more than one subscriber complaint against TeleScripps' CPST rate increase, thereby triggering the Commission's jurisdiction to review this complaint. The valid complaint from the LFA triggers an obligation on behalf of the cable operator to file a justification of its CPST rates with the LFA.<sup>18</sup> Thus, in this case, TeleScripps is required to justify the increase in its CPST rate which is the subject of the TeleScripps' complaint. Initially, in its response, TeleScripps asserted that its February 1, 1996 rate increase was justified by the FCC Form 1210 filed along with the LFA's complaint on July 30, 1996.

6. On October 24, 1996, TeleScripps requested that the FCC Form 1210 that was originally submitted as its response to the complaint, with a maximum permitted rate of \$13.09, be withdrawn. TeleScripps requested that the FCC Form 1210 filing, for the period March 31, 1995 through January 31, 1996, with a maximum permitted rate of \$12.99 be substituted as its rate justification for the February 1, 1996 rate increase.<sup>19</sup> TeleScripps further informed the

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<sup>14</sup> Communications Act, Section 623(c)(3), as amended, 47 U.S.C. Section 543(c)(3)(1996).

<sup>15</sup> See Letter dated October 25, 1996 from Elizabeth W. Beaty, Chief, Financial Analysis and Compliance Division to Mr. Frederic J. Cowan, Esq., Attorney for Hardin County; Mr. Ray Waller, General Manager, TeleScripps Cable Company, confirming the October 23 and 24 telephone conversations and the joint decision to toll the 90 day period until November 7, 1996.

<sup>16</sup> See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, FCC 96-154 (released April 9, 1996) ("Interim Rules").

<sup>17</sup> Joint Telephone Conference Call of October 23, 1995 between Mr. Frederic J. Cowan, Esq., Attorney for Hardin County; Mr. Ray Waller, General Manager, TeleScripps Cable Company; Elizabeth W. Beaty, Chief, Financial Analysis and Compliance Division; Mr. Hugh Boyle, Chief Accountant; and Ms. Andra Cunningham, Attorney/Advisor, Cable Services Bureau.

<sup>18</sup> See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, FCC 96-154 (released April 9, 1996) ("Interim Rules").

<sup>19</sup> See Facsimile Letter dated October 24, 1996 to Elizabeth W. Beaty, Chief, Financial Analysis and Compliance Division, Cable Services Bureau from Mr. Ray Waller, General Manager, TeleScripps Cable Company.

Commission of its intention to reduce its rate to \$12.99 effective November 1, 1996 and to refund to Hardin County CPST subscribers \$.10 per month plus interest for the period February, 1996 through October, 1996.<sup>20</sup> Upon TeleScripps' taking this action the total increase remaining to be justified would be reduced from \$1.31 to \$1.21. TeleScripps claims the remaining \$1.21 increase is justified by the amended FCC Form 1210 covering the period March 1, 1995 through January 31, 1996.

7. Before the CPST rate increase under review, TeleScripps was charging \$11.78. It began charging \$13.09 on February 1, 1996. This rate resulted in the complaint under consideration. Despite TeleScripps' reduction of the CPST rate to \$12.99, it has attempted to demonstrate that the remaining \$1.21 increase is justified by recent cost changes plus previous cost changes that are includible in its maximum permitted rate but were not totally included in its prior charge of \$11.78.<sup>21</sup>

8. To justify the increase, TeleScripps submitted a FCC Form 1210 to include a \$.10 cost change for the first quarter of 1996 in its rates. In addition, TeleScripps claims that its maximum permitted rate just prior to the subject rate increase was higher than the actual rate being charged of \$11.78. It submitted a FCC Form 1200 and two additional FCC Forms 1210 to demonstrate that its maximum permitted rate just prior to its increase was actually \$12.99.

9. In instances where an operator simply increases the rate it was actually charging to its subscribers, we limit our review to the increase only.<sup>22</sup> If, however, the operator adjusts a prior maximum permitted rate that was higher than its prior actual charge to customers, we must examine the maximum permitted rate. This examination is necessary to determine whether the full increase under consideration is justified by cost changes eligible to be included in rates. We will allow the full rate increase to the extent it is justified by recent cost increases plus any portion of the previous maximum permitted rate not already included in charges to customers.

10. Upon review of TeleScripps' filings to justify its CPST rate increase, we conclude that it has not justified the full \$1.31 increase. TeleScripps has withdrawn the FCC Form 1210 for the period January 1, 1996 to March 31, 1996. This filing claimed a \$.10 increase in the

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<sup>20</sup> Id.

<sup>21</sup> Under Commission rules operators may increase rates for changes in certain external costs and for inflation. They may also increase rates for adding channels to the regulated service tiers. See 47 C.F.R. Sections 76.922(d) and (e).

<sup>22</sup> See *In the Matter of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Thirteenth Order on Reconsideration ("Thirteenth Reconsideration Order"), 11 FCC Rcd 388,450-451 (1996).

CPST rate. Since the filing has been withdrawn, the \$0.10 increase originally claimed on the filing is disallowed.<sup>23</sup>

11. Further, the FCC Form 1210 filed for the period March 31, 1995 to January 31, 1996, reflecting a maximum permitted rate of \$12.99, is defective. It includes adjustment for the month of January 1996. Commission rules require the use of calendar year quarters for adjusting rates.<sup>24</sup> Accordingly, TeleScripps was not eligible to include changes for the month of January 1996 on the FCC Form 1210 filed in support of the rate change taken February 1, 1996. Since the form does not identify which changes occurred before January 1996, all changes except the appropriate inflation are disallowed. This filing also had to be corrected to reflect the Transition Rate and Permitted Charge (Lines A1 and A2) brought forward from the previous FCC Form 1210 covering the period July 15, 1994 to March 31, 1995.

12. With respect to the inflation adjustment claimed on the FCC Form 1210 for the period March 31, 1995 to January 31, 1996, we find that TeleScripps claimed excessive inflation. TeleScripps applied an inflation factor of 1.0517 on this FCC Form 1210. According to the most recent statistics released by the Department of Commerce for the third quarter of 1995, TeleScripps could apply an inflation factor of 1.0296 for the 12 month period ended June 30, 1995. All other inflation allowances were required under our rules to be included in rates by August 31, 1995. The additional inflation adjustment of 1.0215, which was the factor applicable to the 9 months ended June 30, 1994, was not included in TeleScripps' charges to customers by August 31, 1995.<sup>25</sup> Thus, that adjustment is disallowed from TeleScripps' maximum permitted rate.

13. As a result of our adjustments and TeleScripps' withdrawal of its FCC Form 1210 for the period January 1, 1996 through March 31, 1996, we find that TeleScripps has justified an increase of only \$0.20 (plus franchise fees).<sup>26</sup>

14. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rate increase of \$1.31 charged by TeleScripps in CUID No. KY0640 IS UNREASONABLE.

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<sup>23</sup> See paragraph 6, *supra*.

<sup>24</sup> 47 C.F.R. Section 76.922 (d)(1).

<sup>25</sup> The Commission publishes an inflation factor each year for the 12 month period running from July 1 to June 30. Inflation for each 12 month period may be taken each year only between the following October 1 and August 31 of the next year. See 47 C.F.R. 76.922(d)(2) and (3). A nine month factor of 1.0215 was published for the period from October 1, 1993 to September 30, 1994 in order to adjust the inflation period to a standard 12 months running from July 1 to the following June 30. See *Second Order on Reconsideration* para. 115.

<sup>26</sup> This finding is based solely on the representations of TeleScripps. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action.

15. 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 against the CPST rate increase charged by TeleScripps in CUID No. KY0640, effective February 1, 1996 IS GRANTED.

16. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that TeleScripps shall refund to subscribers in CUID No. KY0640 that portion of the amount of the CPST rate increase paid by subscribers that exceeded the maximum permitted CPST rate increase of \$0.20, plus interest to the date of the refund. The refund period shall be for the period from February 1, 1996 to the present.

17. IT IS FURTHER ORDERED that TeleScripps shall promptly determine the overcharges to CPST subscribers for the stated period, 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.

FEDERAL COMMUNICATIONS COMMISSION

John E. Logan  
Deputy Chief, Cable Services Bureau