

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

In the Matter of )

TCA Cable TV )

CUID No. AR0037 (Fayetteville)

Complaints Regarding )  
Cable Programming Services Tier )  
Rate Increase )

**ORDER**

**Adopted: November 20, 1996**

**Released: November 20, 1996**

By the Chief, Cable Services Bureau:

1. In this Order we consider complaints against the rate increases of TCA Cable TV<sup>1</sup> ("TCA") for its cable programming services tier ("CPST") in Fayetteville, Arkansas, CUID No. AR0037. TCA has chosen to attempt to justify its CPST rates through benchmark showings on FCC Form 393, FCC Form 1200, and FCC Forms 1210. This Order addresses the reasonableness of TCA's rates for the period September 1, 1993 to the present. We conclude, for the reasons discussed below, that the rates charged by TCA are unreasonable.

2. The Communications Act<sup>2</sup> authorizes the Federal Communications Commission ("Commission") to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992<sup>3</sup> ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber. The Telecommunications Act of 1996<sup>4</sup> ("1996 Act") and our rules implementing the new legislation,<sup>5</sup> require that complaints against the CPST rate be filed with the Commission by a local franchising authority ("LFA") that has

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<sup>1</sup> This system was previously owned by Time Warner Cable. Pursuant to 47 C.F.R. Section 76.400, ownership changed to TCA Cable TV on May 16, 1995.

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

<sup>3</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>4</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>5</sup> See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996) ("*Interim Rules*").

received subscriber complaints. An LFA may not file a CPST rate complaint unless, within 90 days after such increase becomes effective, it receives more than one subscriber complaint.<sup>6</sup> The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPST rate.<sup>7</sup> If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>8</sup>

3. The Commission's original rate regulations became effective on September 1, 1993.<sup>9</sup> The Commission revised its rate regulations effective May 15, 1994.<sup>10</sup> Cable operators with valid CPST complaints filed prior to May 15, 1994 must demonstrate that their CPST rates complied with the Commission's initial rules from the time the complaint was filed through May 14, 1994. Their rates must also comply with the revised rules from May 15, 1994 forward.<sup>11</sup> 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.<sup>12</sup> Operators must use the FCC Form 1200 series to justify their rates for the period beginning May 15, 1994 through a benchmark showing.<sup>13</sup> Cable operators may file a FCC Form 1210 to justify rate increases based on the addition and deletion of channels, changes in certain external costs, and inflation.<sup>14</sup> The Operator must file FCC Form 1210, 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.<sup>15</sup>

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<sup>6</sup> See Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c)(3) (1996).

<sup>7</sup> 47 C.F.R. Section 76.956.

<sup>8</sup> See 47 C.F.R. Section 76.957.

<sup>9</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>10</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>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. Section 76.922(b)(F)(6)(ii); *see Second Order on Reconsideration, supra at 4183, paras. 135-138; supra at 4190, n.136; see also* Public Notice "Questions and Answers on Cable Television Rate Regulation" (April 26, 1994).

<sup>14</sup> 47 C.F.R. Section 76.922(d).

<sup>15</sup> 47 C.F.R. Section 76.960; *supra* note 12.

4. The first valid complaint for this community was filed with the Commission on September 13, 1993. On January 30, 1995 and on February 9, 1995, valid CPST rate complaints were filed against a CPST rate change implemented by TCA on January 1, 1995. In addition, on August 26, 1996, the City of Fayetteville ("City") filed a valid complaint<sup>16</sup> regarding the June 1, 1996 CPST rate increase. 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>17</sup> As required by our rules, the City included with its complaint a copy of the rate justification provided by TCA.

5. Upon review of TCA's FCC Form 393, FCC Form 1200, and FCC Forms 1210 we find that TCA has not correctly calculated its maximum permitted rates beginning September 1, 1993.<sup>18</sup> It is therefore appropriate to make adjustments to TCA's calculations as discussed in the paragraphs below.<sup>19</sup>

6. FCC Form 393 Filing: In its amended FCC Form 393 filed with the Commission on July 11, 1994, TCA calculated a maximum permitted rate for the CPST of \$13.18. However, TCA's actual CPST rate was \$13.22. Thus, TCA has failed to demonstrate that its rate for the CPST was not unreasonable.

7. In addition the \$13.18 was incorrect. TCA was served with a rate complaint on September 10, 1993. The instructions to FCC Form 393, page 11, require that the Inflation Adjustment Factor be calculated using "the number of whole months from September 30, 1992 to the date you will submit this form." In general, a cable operator must submit a justification of its rates no more than 30 days after service of the earliest valid complaint.<sup>20</sup> However, TCA calculated its Inflation Adjustment Factor (line 127, Worksheet 1, Part II) as of the end of November 1993 rather than September 1993 using data released by the U.S. Department of Commerce on August 31, 1993. TCA cannot be permitted to claim an additional inflation adjustment simply because it did not file its Form 393 within this 30-day period. We therefore recalculated the Inflation Adjustment Factor. In making this recalculation we used the most

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<sup>16</sup> *Interim Rules* at 5946.

<sup>17</sup> *See Communications Act, Section 623(c), as amended, 47 U.S.C. Section 543(c)(3) (1996).*

<sup>18</sup> This finding is based solely on the representations of TCA. 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.

<sup>19</sup> Information regarding the specific adjustments made to TCA's FCC Form 393, FCC Form 1200, and FCC Forms 1210 filings can be found in the public file for CUID No. AR0037 which is available in the Cable Services Bureau's public reference room, or through the Commission's copy contractor, International Transcription Services (ITS), 1919 M Street N.W., Washington, DC, 20554, or by calling ITS at (202) 857-3800.

<sup>20</sup> *See 47 C.F.R. § 76.956(a).*

accurate data currently available for inflation adjustments.<sup>21</sup> On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate 1.028 as the Inflation Adjustment Factor through September 1993, the base date TCA should have used in justifying its rates. Therefore, we have adjusted TCA's filing to reflect this factor. As a result, the maximum permitted rate of \$13.18 calculated by TCA has been reduced to \$12.97.

8. FCC Form 1200 Filing: On August 16, 1994, TCA filed its FCC Form 1200 to justify CPST rates in effect after May 14, 1994. In this form, TCA calculated a maximum permitted rate of \$13.00. Consistent with the Commission's decision to waive 47 C.F.R. Section 76.9222(d)(3) for channels added prior to July 1, 1994, TCA attached an adjustment to this rate for a channel added on June 1, 1994.<sup>22</sup> The adjustment increased the rate TCA calculated on its FCC Form 1200 to \$13.29. However, these rates have been reduced to \$12.40 and \$12.69, respectively, by the following adjustments. First, we brought forward to Line A1 the corrected maximum permitted rate of \$12.97 from FCC Form 393. Second, when compared with earlier filings to the Commission, TCA's Form 1200, Line G5 entry does not represent its total equipment revenue as of September 30, 1992 as required by our instructions for Module G. Therefore, we have revised TCA's Line G5 entry to reflect the total equipment revenue as shown in its FCC Form 393, Worksheet 2, Line 204.

9. FCC Forms 1210 Filings: TCA filed three FCC Forms 1210 to justify its rates. The first covers the period April 1, 1994 through September 30, 1994. We adjusted Line A1 of this filing to agree with the corrected maximum permitted rates we calculated on the FCC Form 1200 filing. As a result of the adjustment, TCA's claimed \$13.56 maximum permitted rate on this filing was corrected to \$12.77.

10. TCA's second FCC Form 1210 filing covers the period January 1, 1995 through March 31, 1995. We adjusted Line A1 of this filing to reflect the corrected maximum permitted rate we calculated on TCA's first FCC Form 1210 filing. As a result of this adjustment, TCA's claimed maximum permitted rate of \$15.01 was corrected to \$14.21.

11. TCA's third FCC Form 1210 covers the period from October 1, 1995 through December 31, 1995. We adjusted Line A1 of this filing to reflect the corrected maximum permitted rate we calculated on TCA's second FCC Form 1210 filing. As a result of this adjustment, the maximum permitted rate claimed was corrected from \$17.36 to \$16.53.

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<sup>21</sup> 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).

<sup>22</sup> See letter from Alexandra M. Wilson, Acting Chief, Cable Services Bureau, to Mr. Robert Corn-Revere and Ms. Jacqueline Cleary, dated April 19, 1994.

12. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rates charged by TCA in the City of Fayetteville, Arkansas, CUID No. AR0037 from September 13, 1993 to the present ARE UNREASONABLE.

13. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints against the CPST rates charged by TCA in the City of Fayetteville, Arkansas, CUID No. AR0037 from September 13, 1993 to the present ARE GRANTED TO THE EXTENT DISCUSSED HEREIN.

14. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that TCA shall refund to subscribers in CUID No. AR0037 that portion of the amount paid in excess of the maximum permitted CPST rate of \$12.97 per month (plus franchise fee), plus interest to the date of the refund, for the period from September 13, 1993 to May 14, 1994.

15. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that TCA shall refund to subscribers in CUID No. AR0037 that portion of the amount paid in excess of the maximum permitted CPST rate of \$12.40 per month (plus franchise fee), plus interest to the date of the refund, for the period from May 15, 1994 to May 30, 1994.<sup>23</sup>

16. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that TCA shall refund to subscribers in CUID No. AR0037 that portion of the amount paid in excess of the maximum permitted CPST rate of \$12.69 per month (plus franchise fee), plus interest to the date of the refund, for the period from June 1, 1994 to September 30, 1994.

17. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that TCA shall refund to subscribers in CUID No. AR0037 that portion of the amount paid in excess of the maximum permitted CPST rate of \$12.77 per month (plus franchise fee), plus interest to the date of the refund, for the period from October 1, 1994 to December 31, 1994.

18. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that TCA shall refund to subscribers in CUID No. AR0037 that portion of the amount paid in excess of the maximum permitted CPST rate of \$14.21 per month (plus franchise fee), plus interest to the date of the refund, for the period from January 1, 1995 to December 31, 1995.

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<sup>23</sup> Since TCA didn't elect to take advantage of the refund deferral period pursuant to Section 76.922(b)(6)(ii) of the Commission's Rules, TCA was required to implement the maximum permitted CPST rate determined from the FCC Form 1200 on May 15, 1994. See also Second Order on Reconsideration, 9 FCC Rcd at 4183, see also Public Notice "Questions and Answers on Cable Television Rate Regulation" (April 26, 1994); see *supra* para. 3.

19. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that TCA shall refund to subscribers in CUID No.AR0037 that portion of the amount of the CPST rate increase paid by subscribers that exceeded that the maximum permitted CPST rate of \$16.53 per month (plus franchise fee), plus interest to the date of the refund for the period from January 1, 1996 to the day before TCA implements the maximum permitted CPST rate of \$16.53.

20. IT IS FURTHER ORDERED that TCA shall promptly determine the overcharges to CPST 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.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones  
Chief, Cable Service Bureau