

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

In the Matter of)
)
Marcus Cable Associates, L.P.)
) CUID No. TX0805 (Fort Worth)
)
Complaint Regarding)
Cable Programming Services Tier)
Rate Increase)

ORDER

Adopted: November 25, 1996

Released: November 27, 1996

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

1. In this Order we consider a complaint concerning the June 1, 1996 rate increase by Marcus Cable Associates, L.P. ("Marcus")¹ for its cable programming services tier ("CPST") in the City of Fort Worth, Texas, CUID No. TX0805. This Order addresses only the reasonableness of Marcus' CPST rate increase of \$1.34 that became effective June 1, 1996. We have issued separate orders addressing the reasonableness of the CPST rates prior to the implementation of the rate increase.² We conclude that, for the reason discussed below, the rate increase Marcus implemented on June 1, 1996 is not unreasonable.

2. Under the Communications Act,³ 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.⁴ The Telecommunications Act of 1996⁵ ("1996 Act") and our rules implementing the new legislation,⁶

¹ Sammons Communications, Inc. was purchased by Marcus Cable on November 1, 1995.

² See In the Matter of Sammons Communications Inc., 10 FCC Rcd 3814 (1995) and In the Matter of Sammons Communications, Inc., DA 96-419 (rel. March 28, 1996).

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

⁴ See 47 U.S.C. Section 543(c) (1993).

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

require that complaints against the CPST rates be filed with the Commission by a franchising authority 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 more than one subscriber rate complaint.

3. On September 23, 1996, the franchising authority, the City of Fort Worth (City), filed a complaint against Marcus' June 1, 1996 CPST rate increase. In its complaint the City of Fort Worth asserts that it has received more than one subscriber complaint against Marcus' 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.⁷ As required by our rules, the City's complaint also included a copy of the FCC Form 1240 rate justification that Marcus submitted to the franchising authority.

4. The Commission's original rate regulations took effect on September 1, 1993.⁸ The Commission subsequently revised its rate regulations effective May 15, 1994.⁹ 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.¹⁰ Cable operators attempting to justify their rates for the period beginning May 15, 1994 through a benchmark showing must use the FCC Form 1200 series.¹¹ 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 1210.¹² 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

⁶ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996) ("Interim Rules").

⁷ *Id.*

⁸ 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).

⁹ 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").

¹⁰ *Id.*

¹¹ 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).

¹² 47 C.F.R. Section 76.922(d).

prior to the filing, or where there is a pending complaint against the CPST rate.¹³ Operators may alternatively justify adjustments to their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation and the number of regulated channels that are projected for the twelve months following the rate change.¹⁴ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁵ If actual and projected costs are different during the rate year a "true-up" mechanism is available to correct estimated costs with actual cost changes.¹⁶ The "true-up" requires operators to decrease their rates or alternatively permits them to increase their rates to make an adjustment for over or under estimations of these cost changes.¹⁷

5. Upon review of Marcus' FCC Form 1240, we find no apparent errors in Marcus' calculation of its CPST rate increase. We conclude, therefore, that Marcus' CPST rate increase of \$1.34 which went into effect on June 1, 1996 is justified.¹⁸

6. ACCORDINGLY, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321 that monthly CPST rate increase of \$1.34 charged by Marcus Cable Associates, in CUID No. TX0805, Fort Worth, Texas, beginning June 1, 1996, IS NOT UNREASONABLE.

¹³ 47 C.F.R. Section 76.960; *supra* note 12.

¹⁴ 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, 291 (1996).

¹⁵ *Id.* at 392.

¹⁶ *Id.*

¹⁷ *Id.* The Commission granted Marcus a waiver to allow Marcus, in its initial filing of FCC Form 1240, to include cost adjustments over the period of time between the last date for which actual cost data is available and the effective date of Marcus' new rates. Specifically, Marcus, in its first FCC Form 1240 filing, is permitted to include projected changes in costs, inflation, channels and subscriber information attributable to the period between the last full month for which actual cost data is available and the effective date of new rates. See In the Matter of Annual Rate Adjustment System for Cable Services Rates - Request for Waiver of Requirements Contained in the Thirteenth Order on Reconsideration, DA 96-1804, released November 1, 1996. See Letter from Meredith J. Jones, Chief, Cable Services to Fleischman and Walsh, and Cole, Raywid & Braverman (March 19, 1996).

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

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321 that the City of Fort Worth's complaint against the CPST rate, effective June 1, 1996, charged by Marcus Cable Associates, in CUID No. TX0805, City of Fort Worth, Texas, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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