

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

In the Matter of)	
)	
Viacom Cable)	CUID No. CA0356 (City of Livermore)
)	
Complaint Regarding)	
Cable Programming Service Tier)	
Rate Increase)	

ORDER

Adopted: June 18, 1996

Released: June 19, 1996

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

1. In this Order we deny a complaint filed on March 21, 1996 concerning the March 1, 1996 rate increase of Viacom Cable ("Viacom") for its cable programming service ("CPS") tier in the City of Livermore, California, CUID No. CA0356. Viacom filed its response to this complaint with the Federal Communications Commission ("Commission") on March 26, 1996. This Order addresses only the reasonableness of Viacom's rate increase of \$1.81 that became effective on March 1, 1996. The Cable Services Bureau has already issued an order addressing the reasonableness of Viacom's rates in effect prior to May 14, 1994¹ and will issue a separate order addressing the reasonableness of Viacom's rates in effect after May 15, 1994.²

2. Under the Communications Act,³ the Commission is authorized to review the CPS tier 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 and our rules implementing the

¹ See In the Matter of Viacom Cable, 10 FCC Rcd 2237 (1995).

² Viacom's CPS tier rate for this community for the period after May 15, 1994 is currently under review by the Commission. We reserve the right to make further adjustments to Viacom's CPS tier rate as a result of our review.

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

new legislation,⁶ require that complaints against the CPS tier rates be filed with the Commission by a local franchising authority ("LFA") that has received subscriber complaints. An LFA may not file a CPS tier rate complaint unless, within 90 days after such increase becomes effective, it receives subscriber complaints. This standard requires more than one subscriber rate complaint. The provisions under the 1996 Act became effective upon its enactment on February 8, 1996.⁷

3. The City of Livermore filed a complaint on March 21, 1996 regarding the March 1, 1996 increase in Viacom's CPS tier rate in the above-referenced franchise area. The City of Livermore asserts that it has received more than one complaint against Viacom's CPS tier rate increase, thereby triggering the Commission's jurisdiction to review this complaint.⁸ The valid complaint from the LFA triggers an obligation on behalf of the cable operator to file a justification of its CPS tier rates.⁹ Thus, in this case, Viacom is required to justify the increase in its CPS tier rate which is the subject of the City of Livermore's complaint. In its response, Viacom asserts that its March 1, 1996 rate increase is justified by the FCC Form 1210 covering the period of October 1, 1995 to December 31, 1995 ("Viacom's fourth quarter 1995 FCC Form 1210") filed with the Commission on January 19, 1996.

4. Upon review of Viacom's fourth quarter 1995 FCC Form 1210 we find no apparent errors in Viacom's calculation of its CPS tier rate increase.¹⁰ We conclude, therefore, that Viacom's rate increase, which went into effect on March 1, 1996, is justified.

⁶ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, FCC 96-154 (released April 9, 1996) ("Interim Rules").

⁷ See Communications Act, Section 623 (c), as amended, 47 U.S.C. Section 543(c)(3) (1996).

⁸ In a letter dated March 27, 1996 to William Caton, Acting Secretary of the Commission, Elyn Axelrod, Assistant to the City Manager for the City of Livermore, verified that more than one complaint had been received within the 90 day statutory time frame.

⁹ 47 C.F.R. Section 76.956.

¹⁰ This finding is based solely on the representations of Viacom Cable in its rate filings. 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.

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the March 1, 1996 CPS tier rate increase charged by Viacom Cable in the City of Livermore, California, CUID No. CA0356, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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