

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

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| In the Matter of |) | |
| |) | |
| Jones Growth Partners, L.P. |) | CUID No. IL0618 (Glen Ellyn) |
| |) | |
| Cost of Service Showing to Support |) | |
| Basic Service Tier Rate and |) | |
| Cable Programming Services |) | |

ORDER

Adopted: December 16, 1997

Released: December 19, 1997

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

I. INTRODUCTION

1. On September 14, 1994, the Village of Glen Ellyn ("the Village") petitioned the Commission to review the FCC Form 1220 cost of service showing¹ filed by the above-referenced operator ("Operator") seeking to justify its Basic Service Tier ("BST") rate.² The Commission granted the City's request on March 11, 1996 and agreed to review Operator's cost of service showing for the BST rate.³ On March 6, 1995, a complaint was filed against the March 1, 1995 cable programming service tier ("CPST") rate charged by Operator in the community referenced above. In this order, we will review

¹ See Third Order on Reconsideration in MM Docket Nos. 92-266 and 92-262 (*Third Recon. Order*), 9 FCC Rcd 4316, 4338-39 (1994). The Commission recognized that some local franchising authorities may have resources and personnel sufficient to conduct a review of the rate-setting justification based on the benchmark approach but not to examine and review a cost of service showing. The Commission also understood that this concern may have discouraged certification by many local franchising authorities. Therefore, it established procedures under which the Commission, if requested by the local franchising authority in a petition for special relief under Section 76.7 of the Commission's rules, will issue a ruling that makes cost of service determinations for the BST. 47 C.F.R. § 76.933(d).

² In accordance with 47 C.F.R. § 76.910, on October 4, 1993 the Village of Glen Ellyn filed FCC Form 328 with the Commission requesting certification to regulate the BST rate. The Village of Glen Ellyn also served a copy of FCC Form 328 on Operator which served as notification to Operator of the Village's intention to regulate the BST rate.

³ The Village asserted that it lacked adequately trained personnel necessary to conduct the cost of service review. See Letter, dated September 14, 1994, from David Cox, Assistant to the Village Administrator, to the Federal Communications Commission. The Commission granted the Village's request on March 11, 1996.

Operator's FCC Form 1220 to determine the reasonableness of Operator's BST rates, effective August 1, 1994, and CPST rates, effective March 1, 1995.

2. Under the Communications Act,⁴ 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. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁵ and our rules in effect at the time the complaints were filed, required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber.⁶ The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPST rates.⁷ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁸

3. According to information provided by Operator in its cost of service showing, the franchise area comprised approximately 44,846 BST subscribers and 44,076 CPST subscribers at the time of the filings. Operator provided 25 BST channels and 23 CPST channels. In this review process, pursuant to the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁹ we analyzed Operator's FCC Form 1220 to ensure that the rates charged were not unreasonable and to determine any associated refund liability.¹⁰

4. In this review we analyzed BST rates charged for the period from September 1, 1993 to the present. Operator's FCC Form 1220 seeks to justify a maximum permitted rate ("MPR") for its BST of \$27.15 per month, excluding franchise fees, based on its cost of providing service. Our analysis indicates that Operator's BST MPR was not justified but that the actual BST rate of \$11.29 that Operator was charging effective August 1, 1994 was justified under the Commission's rules.

⁴ Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c)(3) (1996).

⁵ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁶ The first valid complaint against the Operator's CPST rate in the community referenced above was filed on March 6, 1995.

⁷ 47 C.F.R. Section 76.956.

⁸ *See* 47 C.F.R. Section 76.957.

⁹ *See* Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act") at § 623(c)(1)(C), 47 U.S.C. § 543(c)(1)(C). The Communications Act authorizes the Commission to order that an operator refund to subscribers that portion of rates that subscribers have paid that upon review are found to be unreasonable.

¹⁰ *See* Communications Act, §§ 623(b)(1) and 623(c)(1)(C).

II. ADJUSTMENTS

5. Upon review of Operator's FCC Form 1220, Operator's Rate base and expense items have been evaluated to determine whether Operator should be permitted to recover those items. Where a certain rate base or expense element was not supported, was excessive, or was unrelated to providing regulated cable service, such cost was disallowed in whole or in part.¹¹ The following adjustments were made to Operator's filing:

- a) Operator allocated all common costs on FCC Form 1220 based on "weighted channels", i.e. a ratio of the product of tier channels times tier subscribers to the product of total channels times total subscribers. For reasons described in paragraph 123 of the Final Cost Rules,¹² the Commission has deemed this methodology unacceptable. Therefore, we reallocated common costs reported by Operator based on channel ratios, i.e., a ratio of tier channels to total channels.
- b) Operator reported Gross Intangible Assets valued at \$69,261,000 on FCC Form 1220, Worksheet A. In accordance with our Final Costs Rules at paragraph 59,¹³ we reduced reported Gross Intangible Assets by 34% of the purchase price, or \$33,020,800. We further excluded \$164,000 from Gross Intangible Assets related to a math error in Operator's purchase price calculation. Amortization and amortization expenses were also adjusted.
- c) Operator's direct assignments to the equipment basket on FCC Form 1220 were understated. In particular, a comparison of FCC Form 1220 with FCC Form 1205 revealed that Operator failed to unbundle depreciation expenses totaling \$815,317 on FCC Form 1205 Schedules A and C. We amended Operator's assignment on FCC Form 1220.
- d) Operator directly assigned all of its Advertising Revenues, valued at \$928,000, to a non-regulated tier on Line 51 of FCC Form 1220. Because advertising time -- the cost causative factor -- is unavailable on non-regulated tiers, we rejected Operator's assignment. Most of the reported revenues, and corresponding advertising expenses, were reassigned to the CPST. Those revenues that were specifically identified on Operator's

¹¹ The Commission has made clear that the fact that an operator has incurred costs does not necessarily establish its right to recover those costs from subscribers. See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking ("*Rate Order*"), 8 FCC Rcd 5631, 5794 n.619 (1993).

¹² *Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking in* MM Docket No. 93-215 and CS Docket No. 94-28, FCC 95-502, 11 FCC Rcd 2220 (1996) ("*Final Cost Order*").

¹³ *Id.*

supporting ledgers as being derived from BST advertising activities were instead assigned to the BST.

- e) Operator neglected to account for Home Shopping Revenues, Late Fees, and Other Revenues with a composite value of \$84,191 on Line 52 of FCC Form 1220. We adjusted Operator's filing to reflect these offsets as appropriate.

6. Our adjustments reduced Operator's MPR for its BST to \$17.54. However, we find that Operator's monthly BST rate of \$11.29 for the period under review has been justified.¹⁴ Upon review of Operator's FCC Form 1220, to justify its CPST rates effective March 1, 1995, our adjustments reduced Operator's CPST MPR to \$19.27. Because Operator's was actually charging \$12.32, effective March 1, 1995, we find Operator's actual CPST rate of \$12.32, effective March 1, 1995, to be not unreasonable.

III. CONCLUSION

7. Based on our review of Operator's FCC Form 1220 filing and upon applying the Commission's most current rules, we find that, as discussed above, Operator has justified the monthly BST rate of \$10.59 for the period after August 1, 1994 and its CPST rate of \$11.29, effective March 1, 1995.

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321, that the monthly BST rate of \$11.29 and associated equipment and installation rates charged by Operator with respect to the above-referenced community, effective August 1, 1994, IS NOT UNREASONABLE.

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321, that the monthly CPST rate of \$12.32, effective March 1, 1995, IS NOT UNREASONABLE.¹⁵

10. IT IS FURTHER ORDERED that, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321, that the complaint against the monthly CPST rate charged by Operator with respect to the above-referenced CUID number, IS DENIED.

¹⁴ Information regarding the specific adjustments made to Operator's FCC Form 1210 or 1240 filings can be found in the public file for the community referenced above which is available in the Cable Services Bureau's public reference room, or through the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2131 20th Street, N.W., Washington, DC 20036, or by calling (202) 857-3800.

¹⁵ Our findings are based solely on the representations of Operator in its BST and CPST 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.

11. IT IS FURTHER ORDERED, pursuant to Section 76.933(d) of the Commission's rules, 47 C.F.R. Section 76.933(d), that this ruling on the rate Operator was charging for its BST rate is binding on the local franchising authority, the Village of Glen Ellyn, and the cable operator, Jones Growth Partners, L.P.

FEDERAL COMMUNICATIONS COMMISSION

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