

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

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|---------------------------------------|---|-----------|---------------------|
| In the Matter of |) | | |
| |) | | |
| Cablevision Systems |) | CUID Nos. | CT0055 (Bridgeport) |
| of Southern Connecticut, L.P. |) | | CT0056 (Stratford) |
| |) | | CT0114 (Fairfield) |
| |) | | |
| |) | | |
| Complaints Regarding |) | | |
| Cable Programming Services Tier Rates |) | | |

ORDER

Adopted: December 18, 1997

Released: December 19, 1997

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

1. In this Order we consider complaints against the April 1, 1997 rate increase that the above-captioned operator ("Operator") implemented for its cable programming services tier ("CPST") in the communities set forth above. Operator has attempted to justify its CPST rate through a benchmark showing on FCC Forms 1210 and 1235. We have already issued an order which found that Operator's CPST rates in effect before May 15, 1994 ("1994 Order") were not unreasonable.¹ On February 5, 1997, we released another order which found that Operator's CPST rates in effect from May 15, 1994 to February 28, 1996 were not unreasonable, but that Operator's CPST rate for the period March 1, 1996 to September 30, 1996, was unreasonable ("1997 Order").² However, in our 1997 Order, we determined that the total overcharge per subscriber was de minimis and that it would not serve the public interest to order a refund.³ Accordingly, this Order addresses only the reasonableness of Operator's CPST rate of \$15.66 that became effective on April 1, 1997.

2. The Communications Act⁴ 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. If the Commission finds the rate unreasonable, it shall determine the correct rate and any refund liability.⁵ The Telecommunications Act of 1996 ("1996 Act")⁶ and our

¹ See In the Matter of Cablevision Systems of Southern Connecticut, L.P., 10 FCC Rcd 8651 (1995).

² See In the Matter of Cablevision Systems of Southern Connecticut, L.P., 12 FCC Rcd 1454 (1997).

³ *Id.* at para. 4.

⁴ Section 623(c) of the Communications Act of 1934, *as amended*, 47 U.S.C. Section 543(c) (1996).

⁵ See 47 C.F.R. Section 76.957.

rules implementing the new legislation ("Interim Rules"),⁷ 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 more than one subscriber complaint.

3. Cable operators attempting to justify rates for the period beginning May 15, 1994 through a benchmark showing must use the FCC Form 1200 series.⁸ 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 1210.⁹ 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 CPST rate to be unreasonable less than one year prior to the filing, or where there is a pending complaint against the CPST rate.¹⁰

4. FCC Form 1235 is an abbreviated cost of service filing used in cases of network upgrades. It allows cable operators to justify rate increases related to significant capital expenditures used to improve rate-regulated services. This option is extended only in cases of significant upgrades requiring added capital investment, such as bandwidth capacity and conversion to fiber optics, and for system rebuilds. Normal improvements and expansions of service will remain subject to the usual rate adjustments allowed by filings of FCC Forms 1210, 1220 and 1240. Cable operators that incur increases in operating costs associated with a significant network upgrade will be permitted to charge additional rates as justified by their FCC Form 1235 filing.

5. On September 23, 1997, the LFA filed a complaint regarding the April 1, 1997 increase in Operator's CPST rate in the communities referenced above. In its complaint, the LFA asserts that it has received more than one subscriber complaint against Operator's CPST rate increase in each of the communities set forth above, thereby triggering the Commission's jurisdiction to review these complaints.¹¹ The valid complaint from the LFA triggers an obligation by the cable operator to file a justification of its CPST rates with the LFA.¹² Thus, in this case, Operator is required to justify the increase in its CPST rate which is the subject of the LFA's complaint. Operator submitted FCC Forms 1210 and 1235 for the communities set forth above to justify the rate increases that went into effect on April 1, 1997.

⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁷ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

⁸ 47 C.F.R. Section 76.922(b)(6); see also Second Order on Reconsideration, 9 FCC Rcd at 4189 n. 195.

⁹ 47 C.F.R. Section 76.922(d).

¹⁰ 47 C.F.R. Sections 76.958 and 76.960.

¹¹ The first subscriber complaint was received by the LFA on the following dates: April 16, 1997, Bridgeport (CT0055); June 4, 1997, Stratford (CUID No. CT0056); and April 23, 1997, Fairfield (CUID No. CT0114).

¹² 47 C.F.R. Section 76.1402.

6. Operator's April 1, 1997 rate increase reflects not only the quarterly increase as reported on FCC Form 1210, but also recovery of costs for its network upgrade as reflected on FCC Form 1235. Operator initially filed its FCC Form 1210 on April 1, 1997 and its FCC Form 1235 on April 7, 1997 and selected the pre-approval option for the FCC Form 1235.¹³ Operator subsequently filed an amended FCC Form 1210 on December 11, 1997¹⁴ and an amended FCC Form 1235 on December 12, 1997.¹⁵ On its amended FCC Form 1235, Operator chose to allocate its Monthly Network Upgrade Add-on (Part III, Lines 4 and 5) to both its basic service tier ("BST") and its CPST rates.¹⁶ Such an election is consistent with the FCC Form 1235 instructions.¹⁷ Upon review of Operator's amended FCC Form 1210 for the period October 1, 1996 to March 31, 1997, we find that Operator has correctly calculated its maximum permitted rate ("MPR") of \$14.29 and that no adjustments are necessary. Upon review of Operator's amended FCC Form 1235, we have made adjustments. We corrected the Federal tax rate reported by Operator from 35% to 34%. In addition, we increased Operator's advertising revenue offsets to correct miscalculations that were carried forward from the original filings.¹⁸ After our adjustments, the CPST upgrade increase justified by Operator is \$3.20, or \$0.03 less than Operator's calculated MPR of \$3.23.

7. Therefore, when the FCC Form 1210 MPR of \$14.29 is combined with the FCC Form 1235 MPR of \$3.20, the combined MPR is \$17.49. Operator is actually charging a combined rate of \$15.66, effective April 1, 1997. We conclude that the CPST rate of \$15.66 is reasonable for the upgraded system.¹⁹

¹³ The pre-approval option is provided to assist operators in projecting cash flows and obtaining capital for the construction of upgraded cable systems. The FCC Form 1235 can be filed for pre-approval any time prior to the upgrade services becoming available to subscribers using projected upgrade costs. The Network Upgrade Add-on (Part III, Line 4), however, cannot be charged to subscribers until upgraded cable services become available and are providing benefits to customers of rate-regulated services. See FCC Form 1235 Instructions at 2.

¹⁴ See Fax to Helena Wong, Cable Services Bureau, Federal Communications Commission, from Dimitrios Misantonis, Finance Department, Cablevision, dated December 11, 1997.

¹⁵ See Letter to Meredith J. Jones, Chief, Cable Services Bureau, Federal Communications Commission, from Gary Kraus, Vice President of Corporate Finance, Cablevision Systems Corporation, dated December 12, 1997.

¹⁶ See Operator's FCC Form 1235, Part III, Lines 4 and 5, as amended December 12, 1997.

¹⁷ See FCC Form 1235 Instructions at 8.

¹⁸ Information regarding the specific adjustments made to Operator's filing 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 (ITS), 1231 20th Street, N.W., Washington, D.C., 20036, or by calling ITS at (202) 857-3800.

¹⁹ These findings are based solely on the representations of Operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take any 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.

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator's CPST rate of \$15.66 effective April 1, 1997 in the communities set forth above, IS NOT UNREASONABLE.

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referenced herein, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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