

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

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In the Matter of)	CUID No. OR0161 (Sunriver)
)	
Chambers Communications Corp.)	
)	
Order Dismissing Rate Complaint)	
)	

ORDER

Adopted: April 10, 1997

Released: April 14, 1997

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

1. In this Order we dismiss the complaint¹ against the rates that the above-captioned operator ("Operator") was charging for its cable programming services tier ("CPST") in its cable system in the community set forth above. We have determined that in the relevant franchise area the cable operator provides cable service to fewer than 50,000 subscribers and that Operator fits the definition of a "small cable operator" as defined in Section 623(m)(2) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's rules thereunder.²

2. The Communications Act³ 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 on receipt of a complaint as to such rates and to determine correct rates and any refund liability.⁴ Throughout the rate regulation process initiated by the 1992 Cable Act, special attention has been given to the needs of small cable systems.⁵

¹ The complaint was filed with the Commission between September 1, 1993 and February 7, 1996.

² 47 U.S.C. Section 543(m)(2) (1996). *See also* 47 C.F.R. Section 76.1403 (1996).

³ Section 623(c) of the Communications Act of 1934; 47 U.S.C. Section 543(c) (1996).

⁴ *See* 47 C.F.R. Section 76.957 (1996).

⁵ *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulations; Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 (1994); Implementation of Sections of the Cable Television Consumer Protection and

3. In the Telecommunications Act of 1996 ("1996 Act"),⁶ Congress amended Section 623 of the Communications Act⁷ and redefined a small cable operator as one that "directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁸ The Commission's rules currently define one percent of all cable subscribers in the United States as equivalent to 617,000 subscribers.⁹ The Commission's rules also define an affiliated entity as one which "holds a 20 percent or greater equity interest, passive or active, in the operator or exercises de jure or de facto control over the operator."¹⁰ In the 1996 Act, Congress determined that, effective February 8, 1996, the Commission shall not apply its CPST rate regulation rules, promulgated under Sections 623(a), (b) and (c) of the Communications Act,¹¹ to a small cable operator in any franchise area in which that operator services 50,000 or fewer subscribers.¹²

4. Our review reveals that Operator is a small cable company pursuant to Section 623(m)(2) of the Communications Act.¹³ Because Operator serves fewer than 50,000 subscribers in the franchise area in which the community listed above is located, the Operator's CPST rates in this community have effectively been deregulated by the 1996 Act. The complaint against the Operator in this community was filed prior to the passage of the 1996 Act. We conclude, given all of the circumstances presented including, in particular, the Congressional finding that post-1996 CPST rate regulation is unjustified for systems of this size, that there is no likelihood that

Competition Act of 1992: Rate Regulations; Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, 10 FCC Rcd 1226 (1994); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulations; Seventh Order on Reconsideration, 10 FCC Rcd 3225 (1995); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulations; Eighth Order on Reconsideration, 10 FCC Rcd 5179 (1995); and Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulations; Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995).

⁶ Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996).

⁷ 47 U.S.C. Section 543(m) (1996).

⁸ 47 U.S.C. Section 543(m)(2) (1996).

⁹ 47 C.F.R. Section 76.1403(b). See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

¹⁰ 47 C.F.R. Section 76.1403(c) (1996).

¹¹ 47 U.S.C. Sections 543(a) - (c) (1996).

¹² Section 623(m)(1) of the Communications Act of 1934, *as amended*, 47 U.S.C. Section 543(m)(1) (1996). See also 47 C.F.R. Section 76.1403(a).

¹³ 47 U.S.C. Section 543(m)(2) (1996).

adjudication of this complaint through to the end of the process would result in a net rate benefit to subscribers. To the contrary, this process would engage the resources of both the private parties involved and the Commission, while the system operator, in light of Section 623(m), could not effectively be restricted from offsetting any possible prior years' liability against a contemporaneous actual or putative rate increase.¹⁴ Accordingly, the complaint will be dismissed. We find this course of action not only consistent with Section 623 but necessary to implement the Congressional intent embodied in the small company provisions of the 1996 Act and to avoid futile adjudications.¹⁵

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 303(r) and 623(m) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j) 303(r) and 543(m), that the complaint against the CPST rates charged by Operator in the community referenced above IS DISMISSED.

6. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321. If any section, subsection, paragraph, sentence, clause or phrase of this Order is declared invalid for any reason, the remaining portions of this Order shall be severable from the invalid part and shall remain in full force and effect.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴ Subscribers who may have been overcharged by Operator in the past and have since discontinued cable service are not generally paid refund amounts in any event. The Commission's rules permits cable operators to credit refund amounts to the class of subscribers that currently subscribe to the cable programming service tier. *See* 47 C.F.R. Section 76.961(b)(2) (1996).

¹⁵ In this regard we note that the Communications Act provides the Commission with wide discretion to resolve rate complaints pending before it. *See, e.g.,* Section 4(j) of the Communications Act ("Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch and to the ends of justice."). *See also* Sections 4(i), 303(r), 623(b)(2)(A); *New York State Department of Law v. FCC*, 984 F. 2d 1209, 1213 (DC Cir. 1993).