

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

In the Matter of)
) CUID No. PA2095 (Union)
Upper St. Clair Cablevision, Inc.)
d/b/a Adelphia Cable Communications)
)
Complaint Regarding)
Cable Programming Services Tier Rates)

ORDER

Adopted: March 1, 1999

Released: March 5, 1999

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

1. In this Order we consider a complaint against the August 1, 1998 rate increase by the above-referenced operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. This Order addresses only the reasonableness of Operator's August 1, 1998 CPST rate increase.

2. Under the Communications Act,¹ 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 a rate to be unreasonable, it shall determine the correct rate and any refund liability.² The Telecommunications Act of 1996 ("1996 Act")³ and our rules implementing the new legislation ("Interim Rules"),⁴ require that complaints against the CPST rates be filed with the Commission by a local franchising authority ("LFA") that has received more than one subscriber complaint.⁵

3. The LFA for the franchise area referenced above filed a complaint with the Commission on January 26, 1999, against Operator's August 1, 1998 CPST rate increase from \$15.70 to \$18.24.⁶ The

¹ Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

² See Section 76.957 of the Commission's Rules, 47 C.F.R. §76.957.

³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

⁵ See Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

⁶ In its complaint, the LFA also included an October 1, 1998 CPST rate increase to \$18.25. However, that increase has not yet been implemented. See Letter dated February 26, 1999 to Cable Services Bureau from Leslie J. Brown, Assistant General Counsel, Adelphia Cable Communications. Because an LFA may only file a complaint

LFA verified that it received more than one subscriber complaint and that the first valid complaint was received by the LFA on August 10, 1998. The filing of a complete and timely LFA complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁷ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁸

4. To justify rates for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.⁹ Operators are permitted to make changes to their rates on a quarterly basis using FCC Form 1210.¹⁰ Operators may 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.¹¹ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹² Because Operator was not subject to regulation at the time the complaint was filed, Operator filed an FCC Form 1240 as an unregulated operator in accordance with Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, MM Docket No. 92-266 ("Thirteenth Reconsideration Order")¹³ and the FCC Form 1240 Instructions.

5. Upon review of Operator's FCC Form 1240 for the projected period August 1, 1998 through July 31, 1999, we adjusted Operator's entry at Line D2 (Current External Costs Segment) to \$6.9868 rather than \$5.6684. The FCC Form 1240 Instructions for Line D2 require that Operator enter external costs exclusive of those for which Operator has not already made rate increases.¹⁴ Operator had previously included \$6.9868 as external costs in its CPST rate of \$15.70.¹⁵ Our adjustment resulted in a revised maximum permitted rate ("MPR") of \$17.79 rather than Operator's calculated MPR of \$19.12.

against a CPST rate that has already been implemented, we do not review Operator's justification for its proposed CPST rate increase to \$18.25. See 47 C.F.R. §76.950(a).

⁷ 47 C.F.R. §76.956.

⁸ *Id.*

⁹ 47 C.F.R. §76.922.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 11 FCC Rcd 388 (1996).

¹⁴ FCC Form 1240 Instructions at p. 15.

¹⁵ See Operator's FCC Form 1240 dated April 29, 1997, which Operator filed with the LFA. See also Thirteenth Reconsideration Order at ¶162 (even if no prior complaint was filed, an operator may be required to provide the projections on which its previous rates were based).

Because Operator's actual CPST rate of \$18.24, effective August 1, 1998, exceeds its revised MPR, we find Operator's actual CPST rate of \$18.24, effective August 1, 1998, to be unreasonable.¹⁶

6. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rate of \$18.24, charged by Operator in the franchise area referenced above, effective August 1, 1998, IS UNREASONABLE.

7. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$17.79 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning August 10, 1998 (the date of the first subscriber complaint) through the day before Operator implements the maximum permitted CPST rate of \$17.79.

8. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator take into account our FCC Form 1240 adjustments when calculating its maximum permitted rate and performing the true-up calculation on its next FCC Form 1240.

10. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the CPST rate charged by Operator in the community referenced above IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Patrick A. Boateng
Acting Chief, Financial Analysis and Compliance Division
Cable Services Bureau

¹⁶ 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 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. Information regarding the specific adjustments made to Operator's FCC Forms can be found in the public files for the above-referenced communities which are 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, DC, 20036, or by calling ITS at (202) 857-3800.