

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

In the Matter of )  
 ) CUID No. TX0576 (Haltom)  
Marcus Cable Associates, LP )  
 )  
Complaint Regarding )  
Cable Programming Services Tier Rates )

ORDER

Adopted: May 9, 2000

Released: May 11, 2000

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

1. In this Order we consider a complaint against the rates charged by the above-referenced operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. We have already issued an Order in which we found Operator's CPST rate in effect through May 14, 1994 to be unreasonable ("Prior Order").<sup>1</sup> In our Prior Order, we stated that our findings "do not in any way prejudice the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations."<sup>2</sup> Subsequent to our Prior Order, we issued an Order approving a refund plan for Operator which included Operator's refund liability through July 15, 1994.<sup>3</sup> Consequently, this Order addresses only the reasonableness of Operator's CPST rates in effect beginning July 16, 1994.

2. Under the Communications Act,<sup>4</sup> 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<sup>5</sup> ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>6</sup> The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.<sup>7</sup> If the

<sup>1</sup> See In the Matter of Sammons Communications, Inc., 10 FCC Rcd 3854 (1995).

<sup>2</sup> *Id.* at n. 1.

<sup>3</sup> See In the Matter of Marcus Cable Associates, LP, 14 FCC Rcd 15865 (1999). Operator elected to take advantage of the Commission's rules which provide for a refund liability deferral period, if timely requested by Operator, beginning May 15, 1994 and ending July 14, 1994, for any overcharges resulting from Operator's calculation of a new maximum permitted rate on its FCC Form 1200. See 47 C.F.R. 76.922(b)(6)(ii).

<sup>4</sup> Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

<sup>5</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>6</sup> See Section 76.956 of the Commission's Rules, 47 C.F.R. §76.956.

<sup>7</sup> *Id.*

Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>8</sup>

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>9</sup> Cable operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.<sup>10</sup> Operators may justify 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.<sup>11</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>12</sup>

4. Upon review of Operator's FCC Form 1200, we find Operator's calculated maximum permitted rate ("MPR") of \$7.49 to be reasonable. Because Operator's actual CPST rate of \$8.11, effective July 16, 1994 through January 31, 1995, exceeds its MPR we find Operator's actual CPST rate of \$8.11, effective July 16, 1994 through January 31, 1995, to be unreasonable. Upon review of Operator's FCC Form 1210, which updates Operator's FCC Form 1200, we find Operator's calculated MPR of \$8.90 to be reasonable, effective February 1, 1995. Because Operator's actual CPST rate of \$8.11, effective February 1, 1995, does not exceed its MPR we find Operator's actual CPST rate of \$8.11, effective February 1, 1995, to be reasonable.<sup>13</sup>

5. 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 \$8.11, charged by Operator in the community referenced above, effective July 16, 1994 through January 31, 1995, IS UNREASONABLE.

6. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321 that the CPST rate of \$8.11, charged by Operator in the community referenced above, effective February 1, 1995, IS REASONABLE.

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 \$7.49 per month (plus franchise fees), plus interest to the date of the refund, for the period July 16, 1994 through January 31, 1995.

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<sup>8</sup> See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

<sup>9</sup> See Section 76.922 of the Commission's Rules 47 C.F.R. § 76.922.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> This finding is 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.

8. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated period, and shall within 30 day 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 with 60 days of the approval of the plan.

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

FEDERAL COMMUNICATIONS COMMISSION

Kathleen F. Costello, Acting Chief  
Financial Analysis and Compliance Division  
Cable Services Bureau