

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

In the Matter of	)	CUID Nos.	CA0019 (Modesto)
	)		CA0670 (Stanislaus)
Cable One, Inc.	)		
	)		
Petition for Reconsideration and Refund Plans	)		

**ORDER ON RECONSIDERATION  
AND REFUND PLAN ORDER**

**Adopted: October 19, 2000**

**Released: October 23, 2000**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 98-54 ("Second Order"),<sup>1</sup> filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").<sup>2</sup> We also consider refund plans filed in response to our Order, DA 95-1071 ("First Order"),<sup>3</sup> which resolved complaints against Operator's cable programming services tier ("CPST") rates in effect in the above-referenced communities prior to May 15, 1994 ("Refund Plan I") and our Second Order, which resolved complaints against CPST rates in effect beginning May 15, 1994 ("Refund Plan II"). In this Order, we grant Operator's Petition in part, modify our Second Order and dismiss Operator's Refund Plan II as moot. We also find Operator's Refund Plan I to be unacceptable and order Operator to pay refunds in the amount we have calculated plus franchise fees and interest.

2. Under the Communications Act, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable.<sup>4</sup> The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),<sup>5</sup> 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 or local franchising authority. The filing of a valid complaint triggers

<sup>1</sup> In the Matter of Post-Newsweek Cable, Inc., DA 98-54, 13 FCC Rcd 10213 (1998).

<sup>2</sup> On July 3, 1997, the Federal Communications Commission received notification, pursuant to 47 C.F.R. § 76.400, of a change in operator to Cable One, Inc.

<sup>3</sup> In the Matter of Post-Newsweek Cable, Inc., DA 95-1071, 10 FCC Rcd 9839 (1995).

<sup>4</sup> 47 U.S.C. §543 (c) (1996).

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

an obligation upon the cable operator to file a justification of its CPST rates.<sup>6</sup> If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>7</sup>

3. We first review Operator's Refund Plan I.<sup>8</sup> Our review of Operator's refund plan reveals that Operator improperly attempted to offset its CPST refund liability with undercharges for equipment used to receive the basic services tier ("BST"). Because Operator did not file a petition for reconsideration or an application for review of the First Order, this issue has not been properly placed before the Commission in accordance with the Commission's rules.<sup>9</sup> A refund plan is not a substitute for the reconsideration and review process and issues raised in refund plans will not be considered.<sup>10</sup> However, we note that the Commission has addressed the issue of inter-tier offsets in *Cencom*.<sup>11</sup> In *Cencom*, the Commission determined that such inter-tier offsets are "inconsistent with the Commission's conclusion in the [Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92-266, Report and Order and Further Notice of Proposed Rulemaking<sup>12</sup>] that cable operators should not balance low BST rates with CPST rates that exceed the maximum permitted rate for the tier."<sup>13</sup> We will not accept Operator's Refund Plan I and will order Operator to pay refund liability as follows. For the community of Stanislaus, CUID No. CA0670, we calculate refund liability in the amount of \$4,757.27, which includes interest through August 31, 2000. For the community of Modesto, CUID No. CA0019, we calculate refund liability in the amount of \$42,089.50, which includes interest through August 31, 2000. We will order Operator to pay that amount plus franchise fees plus interest through the date of payment.<sup>14</sup>

4. In our Second Order, we ordered Operator to pay refunds for charges in excess of \$8.92 in Modesto, CUID No. CA0019, and \$8.90 in Stanislaus, CUID No. CA0670 for the period from May 15, 1994 through July 14, 1994. Operator was charging a rate of \$9.02 in both communities. On February 17, 1998, Operator filed its Petition and Refund Plan II. In its Petition, Operator argues that the refund amount ordered in our Second Order is *de minimis*. We agree. Because we find the total overcharge for the period under review to be *de minimis*, we find that it would not be in the public interest to order a

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<sup>6</sup> 47 C.F.R. §76.956.

<sup>7</sup> 47 C.F.R. §76.957.

<sup>8</sup> The First Order required Operator to determine the overcharges to cable programming service tier ("CPST") subscribers for the period stated in the Refund Order and file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount 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.

<sup>9</sup> See Sections 1.101 - 1.120 of the Commission's Rules, 47 C.F.R. §§ 1.101 - 1.120.

<sup>10</sup> See also, In the Matter of Marcus Cable Associates, L.P., 12 FCC Rcd 19526 (1997).

<sup>11</sup> See In the Matter of Cencom Cable Income Partners II, LP, 12 FCC Rcd 7948 (1997).

<sup>12</sup> 8 FCC Rcd 5631 (1993).

<sup>13</sup> *Cencom* at ¶ 22 (footnote omitted).

<sup>14</sup> We calculated a principal amount of \$3,145.70 for CA0670 and \$27,853.15 for CA0019.

refund. Therefore, we will grant Operator's Petition in part and modify our Second Order. Because our resolution of this issue disposes of Operator's refund liability for the Second Order, we will dismiss Operator's Refund Plan II as moot.

5. Accordingly, IT IS ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator's Refund Plan I, filed in response to DA 95-1071, In the Matter of Post-Newsweek Cable, Inc., 10 FCC Rcd 9839 (1995), IS NOT APPROVED, and that Operator shall pay to subscribers the refund amount of \$42,089.50 for the community of Modesto, CUID No. CA0019 and the refund amount of \$4,757.27 for the community of Stanislaus, CUID No. CA0670, plus franchise fees, plus interest through the date of payment, within 60 days of the date of this Order.

6. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. § 0.321 and § 76.962, that Operator file a certificate of compliance with the Chief, Cable Services Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

7. IT IS FURTHER ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's Petition for Reconsideration IS GRANTED IN PART and Operator's Refund Plan II IS DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that In the Matter of Post-Newsweek Cable, Inc., DA 98-54, 13 FCC Rcd 10213 (1998), IS MODIFIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief  
Cable Services Bureau