

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

In the Matter of	)	
	)	CUID No. IL0525 (Libertyville)
AT&T Broadband, LLC	)	IL0526 (Mundelein)
	)	IL0528 (Grayslake)
Petition for Reconsideration	)	

**ORDER ON RECONSIDERATION**

**Adopted: October 24, 2000**

**Released: October 26, 2000**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 95-1381 ("Prior Order"),<sup>1</sup> filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator"). Our Prior Order resolved all pending complaints against Operator's CPST rates in the above-referenced community through May 14, 1994, and found Operator's cable programming services tier ("CPST") rates to be unreasonable. 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 regulations."<sup>2</sup> On July 28, 1995, Operator filed a timely application for review of our Prior Order as well as a refund plan. On July 13, 2000, Operator requested that the Cable Services Bureau ("Bureau") process the application for review as a petition for reconsideration.<sup>3</sup> In this Order, we grant Operator's Petition in part, modify our Prior Order and dismiss Operator's refund plan as moot. We also review the reasonableness of Operator's CPST rates in effect beginning May 15, 1994.

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. The filing of a valid complaint triggers an obligation upon the cable

---

<sup>1</sup> In the Matter of Jones Intercable, Inc., DA95-1381, 10 FCC Rcd 7187 (1995).

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

<sup>3</sup> See letter dated July 28, 2000 to the Cable Services Bureau from Steven J. Horvitz, attorney for AT&T Broadband, LLC, successor to Jones Intercable in the above-referenced communities.

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

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

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. Operators must use the FCC Form 393 to justify rates for the period prior to May 15, 1994. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>8</sup> 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>9</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>10</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>11</sup>

4. In its Petition, Operator points out that clerical mistakes were made on both the FCC Form 393 it submitted to the Bureau and on the revised FCC Form 393 which the Bureau relied on to calculate Operator's maximum permitted rate ("MPR") in our Prior Order. These clerical errors resulted in a reduction in both Operator's calculated FCC Form 393 MPR and the MPR established in our Prior Order. First, Operator argues that the legal entity that owned the cable system is a limited partnership and not subject to federal and state corporate income taxes. Operator incorrectly made entries on its submitted FCC Form 393 that indicated that Operator was a tax-paying corporation. Secondly, Operator argues that the Bureau incorrectly entered a lower channel count on its revised FCC Form 393 for the community of Grayslake (CUID No. IL0528). Upon review of Operator's submitted FCC Form 393 and the Bureau's revised FCC Form 393, we agree with Operator on both issues. Therefore, we will modify our Prior Order.

5. Along with its Petition, Operator submitted amended FCC Form 393s that corrected the errors and calculated a new MPR of \$10.94 for all three referenced communities. Upon review of these amended FCC Form 393s, we find the calculated MPR of \$10.94 to be reasonable. Operator elected to defer refund liability for overcharges associated with its FCC Form 1200, for the period May 15, 1994 through July 14, 1994, pursuant to the Commission's Rules.<sup>12</sup> Therefore, Operator will only incur refund liability for the period May 15, 1994 through July 14, 1994 for any CPST charges over the FCC Form 393

---

<sup>6</sup> 47 C.F.R. §76.956.

<sup>7</sup> 47 C.F.R. §76.957.

<sup>8</sup> See 47 C.F.R. § 76.922.

<sup>9</sup> *Id.*

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

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

<sup>12</sup> The Commission's rules provide for a refund liability deferral period beginning May 15, 1994 and ending July 14, 1994, if timely requested by the Operator, for any overcharges resulting from Operator's calculation of a new MPR on the FCC Form 1200. See 47 C.F.R. § 76.922(b)(6)(ii).

MPR.<sup>13</sup> Because Operator's actual CPST rate of \$10.97, effective from the date of the first valid complaint<sup>14</sup> through July 14, 1994, exceeds its FCC Form 393 MPR of \$10.94, we find Operator's actual CPST rate of \$10.97 to be unreasonable. However, we find the total overcharge for the period under review<sup>15</sup> to be *de minimis*, and it would not be in the public interest to order a refund. Because our resolution of these issues disposes of Operator's refund liability, we decline to address any other issues raised by Operator in its Petition. We will dismiss Operator's refund plan as moot.

6. Upon review of Operator's FCC Form 1200, we find Operator's calculated MPRs of \$10.79 for Libertyville (IL0525), \$10.73 for Mundelein (IL0526), and \$10.26 for Grayslake (IL0528), to be reasonable. Because Operator's actual CPST rates of \$10.79 for Libertyville (IL0525), \$10.73 for Mundelein (IL0526), and \$10.23 for Grayslake (IL0528), effective July 15, 1994, do not exceed its MPRs, we find Operator's actual CPST rates to be reasonable, effective July 15, 1994.<sup>16</sup>

7. Accordingly, IT IS 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 TO THE EXTENT INDICATED HEREIN and Operator's refund plan IS DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that In the Matter of Jones Intercable, Inc., DA 95-1381, 10 FCC Rcd 7187 (1995) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

9. 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 \$10.97, charged by Operator in the franchise areas referenced above, effective from the date of the first valid complaint through July 14, 1994, IS UNREASONABLE.

10. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rates charged by Operator in the franchise areas referenced above, effective July 14, 1994, ARE REASONABLE.

---

<sup>13</sup> *Id.*

<sup>14</sup> As noted in our Prior Order, the first valid complaint against the CPST rates in the community of Libertyville (IL0525) was received on November 8, 1993, in Mundelein (IL0526) on December 27, 1993 and in Grayslake (IL0528) on February 28, 1994.

<sup>15</sup> The period under review runs from the date of the first valid complaint through July 14, 1994.

<sup>16</sup> 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.

11. 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 against the CPST rates charged by Operator in the communities referenced above ARE GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief  
Cable Services Bureau