

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

In the Matter of)
)
Suburban Cable TV Co., Inc.) CUID No. NJ0029 (Margate)
)
Complaints Regarding Cable Programming)
Services Tier Rates)

ORDER

Adopted: October 15, 2001

Released: October 17, 2001

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

1. In this Order we consider complaints filed against the rates charged by the above-referenced operator ("Operator")¹ for its cable programming services tier ("CPST") in the community referenced above. On September 8, 1994, a complaint was filed by the local franchising authority ("LFA") with the Federal Communications Commission ("Commission") against Operator's alleged CPST rate increase. On May 4, 1995, the Commission received a subscriber complaint against Operator's April 7, 1995 CPST rate increase. In this Order we dismiss the LFA's complaint for being untimely filed and we address the reasonableness of Operator's CPST rates beginning May 4, 1995.

2. At the time the above-referenced complaints were filed, the Commission was authorized under the Communications Act,² to review the CPST rates of cable systems not subject to effective competition upon the filing of a valid complaint. At the time the September 8, 1994 complaint was filed, Section 623 (c) (3) of the Communications Act required that complaints be filed within "a reasonable period of time" following a change in rates.³ We determined that "a reasonable period of time" is 45 days.⁴ An LFA must file a complaint within 45 days of the date the rate increase becomes effective. Our review of the record indicates that no rate increase took effect within 45 prior to September 8, 1994. Therefore, the September 8, 1994 complaint was not timely filed with the Commission and will be dismissed.

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁵ Operators may file a FCC Form 1210 to justify quarterly rate increases based on the

¹ The term "Operator" includes Operator's successors and predecessors in interest.

² Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c) (1996).

³ 47 U.S.C. §543 (c) (3) (1995).

⁴ *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, 9 FCC Rcd 1164 at n.314 (1994).

⁵ *See* Section 76.922 of the Commission's Rules, 47 C.F.R. §76.922.

addition and deletion of channels, changes in certain external costs and inflation.⁶ 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.⁷ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.⁸

4. Upon review of Operator's FCC Form 1200, we find Operator's calculated maximum permitted rate ("MPR") of \$10.78 to be reasonable. Upon review of Operator's FCC Form 1210 covering the period April 1, 1994 through December 31, 1994, we find Operator's calculated MPR of \$12.34 to be reasonable. Because Operator's actual CPST rate of \$12.67, effective May 4, 1995 through June 30, 1995 exceeds its calculated MPR of \$12.34, we find Operator's actual CPST rate of \$12.67, effective May 4, 1995 through June 30, 1995, to be unreasonable.⁹ Upon review of Operator's FCC Form 1210 covering the period January 1, 1995 through June 30, 1995, we find Operator's calculated MPR of \$12.57 to be reasonable. Because Operator's actual CPST rate of \$12.67, effective July 1, 1995 through September 30, 1996, exceeds its calculated MPR of \$12.57, we find Operator's actual CPST rate of \$12.67, effective July 1, 1995 through September 30, 1996, to be unreasonable. Upon review of Operator's FCC Form 1240 for the projected period October 1, 1996 through September 30, 1997, we find Operator's calculated MPR of \$14.41 to be reasonable. Because Operator's actual CPST rate of \$13.71, effective October 1, 1996 does not exceed its calculated MPR of \$14.41, we find Operator's actual CPST rate of \$13.71, effective October 1, 1996, to be reasonable.¹⁰

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 \$12.67, charged by the Operator in the community referenced above, effective May 4, 1995 through September 30, 1996, 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 \$13.71, charged by the Operator in the community referenced above, effective October 1, 1996, 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 community referenced above that portion

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 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 community 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 NW, Washington, DC, 20036, or by calling ITS at (202) 857- 3800.

¹⁰ In this FCC Form 1240, Operator trued-up its refund liability for the period July 1, 1995 through May 31, 1996.

of the amount paid in excess of the maximum permitted CPST rate of \$12.34 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning May 4, 1995 through June 30, 1995.

8. 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 community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$12.57 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning June 1, 1996 through September 30, 1996.

9. 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.

10. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that the September 8, 1994 complaint referenced herein, against the CPST rates charged by Operator in the community referenced above, IS DISMISSED.

11. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the May 4, 1995 complaint referenced herein against the CPST 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