

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

In the Matter of)	File No. EB-02-TC-028
)	CUID No. TN0062 (Chattanooga)
Chattanooga Cable TV Company)	
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: September 30, 2002

Released: October 1, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider a petition for reconsideration ("Petition") and request for stay of Cable Services Bureau Order, DA 96-545² ("Prior Order"), filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").³ The Prior Order resolved complaints filed against the rates charged by Operator for its cable programming services tier ("CPST") in the community referenced above through May 14, 1994. In the Prior Order, the Cable Services Bureau stated that its findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."⁴ In this Order we modify, on our own motion, the Prior Order, dismiss Operator's Petition and request for stay and address the reasonableness of Operator's CPST rates beginning May 15, 1994.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the complaints were filed, 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. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁶ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁷ and the Commission's rules

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *In the Matter of Chattanooga Cable TV Company*, DA 96-545, 11 FCC Rcd 4778 (CSB 1996).

³ The term "Operator" includes Operator's successors and predecessors in interest.

⁴ Prior Order at n. 1.

⁵ 47 U.S.C. §543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷ Pub. L. No. 104-104, 110 Stat. 56 (1996).

implementing the legislation ("Interim Rules"),⁸ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁹ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. During the first phase of rate regulation, from September 1, 1993 until May 15, 1994, the benchmark rate analysis and comparison with an operator's actual rates were calculated using the FCC Form 393.¹¹ The benchmark formula was revised, effective May 15, 1994.¹² Systems first becoming subject to rate regulation after May 15, 1994 were required to justify their initial regulated rates using forms in the FCC Form 1200 series.¹³ Systems against which rate complaints were still pending when the Commission revised its benchmark formula were required to recalculate their benchmark rates as of May 15, 1994 using the FCC Form 1200.¹⁴ The Commission's rules 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 the FCC Form 1200.¹⁵ However, Operator will incur refund liability from May 15, 1994 through July 14, 1994 (or the date Operator restructures its rates, if sooner) for any CPST rates charged above the FCC Form 393 MPR approved by the Commission.¹⁶

4. 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.¹⁷ Operators may justify their rates on an annual basis using an 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.¹⁸ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁹

⁸ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

⁹ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

¹⁰ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹¹ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5755-56, 5766-67, 5881-83 (1993).

¹² See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 9 FCC Rcd 4119 (1994).

¹³ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹⁴ *Id.*

¹⁵ See 47 C.F.R. § 76.922 (b) (6) (ii).

¹⁶ 47 C.F.R. § 76.922 (b) (6) (ii). *See also Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, 9 FCC Rcd 4119, 4183-4185 (1994) (the maximum permitted rates determined under Form 393 may apply from May 15, 1994 until the date that the operator implemented its new rates, as determined under the Form 1200 series.)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

5. Our review of the Prior order and the record herein indicates that the total overcharges for the FCC Form 393 period covered by the Prior Order are *de minimis* and it would not be in the public interest to order the payment of refunds. We therefore modify the Prior Order to exclude any refund liability. It would not be a judicious use of Commission resources to attempt to resolve appeals of CPST rate orders that had no adverse affect on the petitioner, either because the order found no refund liability at all or found a *de minimis* liability that did not later result in the petitioner incurring actual refund liability. Resolution of such appeals will have no consequences other than to put additional strain on limited Commission resources which are better used to resolve pending complaints and appeals of orders that involve potential or actual refund liability. Therefore, the Cable Services Bureau determined that appeals of CPST rate orders that do not involve actual refund liability will be dismissed because there is no real relief that may be granted through resolution of the appeal.²⁰ Because our resolution of Operator's Petition would have no effect on Operator's refund liability, we decline to address the issues raised by Operator and we dismiss Operator's Petition and request for stay.

6. Upon review of Operator's FCC Form 1200, we accept Operator's calculated maximum permitted rate ("MPR") of \$13.96.²¹ Because Operator's actual CPST rate of \$14.30, effective July 15, 1994²² through December 31, 1994, exceeds its calculated MPR, we find Operator's actual CPST rate of \$14.30, effective July 15, 1994 through December 31, 1994, to be unreasonable. Upon review of Operator's FCC Form 1210, covering the period April 1, 1994 through December 31, 1994, we find Operator's actual CPST rate of \$14.30, effective January 1, 1995, to be reasonable. We also find Operator's actual CPST rate of \$16.06, effective February 1, 1995, to be reasonable.

7. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration and request for stay filed by Operator ARE DISMISSED.

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 Triax Midwest Associates*, DA 96-545, 11 FCC Rcd 4778 (CSB 1996) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$14.30, charged by Operator in the community referenced above, effective July 15, 1994 December 31, 1994, IS UNREASONABLE.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rates charged by Operator in the community referenced above, effective January 1, 1995, ARE REASONABLE.

²⁰ See, for example, *In the Matter TCI of Illinois d/b/a Telenois, Inc.*, DA 01-1468, 16 FCC Rcd 12654 (CSB 2001).

²¹ In the Prior Order, the Cable Services Bureau calculated MPRs for both the rebuild and non-rebuild portions of the franchise area. Because Operator's entire system was upgraded by July 15, 1994, we calculate a single rate for the entire system.

²² Because Operator elected to defer refund liability, its liability for overcharges based on the FCC Form 1200 begins on July 15, 1994.

11. 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 \$13.96 per month (plus franchise fees), plus interest to the date of the refund, for the period July 15, 1994, through December 31, 1994.

12. 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, Enforcement 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.

13. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the complaints referenced herein against the CPST rates charged by Operator in the community referenced above ARE GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau