

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

In the Matter of	)	File No. EB-02-TC-063
	)	CUID No. AR0037 (Fayetteville)
TCA Cable Partners	)	
	)	
Petition for Reconsideration	)	

**ORDER ON RECONSIDERATION**

**Adopted: September 30, 2002**

**Released: October 1, 2002**

By the Chief, Enforcement Bureau:<sup>1</sup>

1. In this Order we consider a petition for reconsideration ("Petition") and request for stay of Order, DA 98-2506<sup>2</sup> ("Second Order"), filed with the Federal Communications Commission ("Commission").<sup>3</sup> The Second Order resolved a complaint against the April 1, 1998 rate increase by the above-referenced operator ("Operator")<sup>4</sup> for its cable programming services tier ("CPST") in the community referenced above. It also resolved a petition for reconsideration of Order, DA 96-1936 ("First Order").<sup>5</sup> In this Order, we grant Operator's Petition in part, amend the Second Order and calculate Operator's refund liability.

2. Under the provisions of the Communications Act<sup>6</sup> 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")<sup>7</sup> 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

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<sup>1</sup> 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).

<sup>2</sup> *In the Matter of TCA Cable Partners d/b/a TCA Cable TV*, DA 98-2506, 13 FCC Rcd 23577 (CSB 1998).

<sup>3</sup> Operator originally filed an application for review, but requested that the application for review be treated as a petition for reconsideration. *See* letter dated April 17, 2002 from Steven J. Horvitz, counsel for Operator.

<sup>4</sup> The term "Operator" includes Operator's predecessors and successors in interest.

<sup>5</sup> *In the Matter of TCA Cable TV*, DA 96-1936, 11 FCC Rcd 15024 (CSB 1996).

<sup>6</sup> 47 U.S.C. §543(c) (1996).

<sup>7</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),<sup>8</sup> and the Commission's rules implementing the legislation ("Interim Rules"),<sup>9</sup> require that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint.

3. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>10</sup> If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>11</sup> Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>12</sup> Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.<sup>13</sup>

4. In its Petition, Operator argues that it was entitled to an additional month of inflation on its FCC Form 393. We agree. Our adjustment increases Operator's FCC Form 393 maximum permitted rate ("MPR") from \$12.97, established in the Second Order, to \$13.00.

5. Operator also argues that it should be allowed to substitute \$83,792 for the \$65,703 figure it originally inserted on Line 204 (Equipment Revenue (Monthly)) of Worksheet 2 of its FCC Form 393. In the First Order, the Cables Services Bureau revised Line G5 (Total Equipment Revenue as of 9/30/92) of Operator's FCC Form 1200 to match Line 204 of Operator's FCC Form 393. In the Second Order, the Cable Services Bureau reversed its decision, accepting Operator's argument that the instructions for Line 204 of the FCC Form 393 and Line G5 of the FCC Form 1200 are different, and allowed Operator its claim of \$83,792 on Line G5 of its FCC Form 1200 rather than the \$65,703 figure reported by Operator on Line 204 of its FCC Form 393.<sup>14</sup>

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<sup>8</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>9</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

<sup>10</sup> See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

<sup>11</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

<sup>12</sup> See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

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

<sup>14</sup> The Cables Services Bureau concluded that "[t]he instructions for FCC Form 1200, Line G5 require the entry of equipment revenue information 'for the last whole monthly billing period ending on or before September 30, 1992.' [footnote omitted] In contrast the relevant instructions for FCC Form 393 direct cable operators to calculate their 'monthly average equipment revenue [using] total revenues ... earned over the last fiscal year for the community unit.' [footnote omitted] Operator argues that the FCC Form 1200 requires equipment revenue information from a particular month, while the FCC Form 393 requires an annual monthly average of equipment revenue. Therefore, Operator contends that it correctly entered September 1992 equipment revenue information on Line G5 of its FCC Form 1200, which the Bureau replaced with average annual equipment revenues derived from FCC Form 393. Upon consideration of Operator's Petition with respect to the adjustment of equipment revenue on Line G5 of FCC Form 1200, we find that Operator correctly followed the FCC Form 1200 instructions. Accordingly, we will grant Operator's Petition with respect to this issue and permit Operator to use the equipment revenue information that it entered on Line G5 of its FCC Form 1200." Second Order at ¶¶ 7-8.

6. Now Operator reverses itself and argues that it should be allowed to change the original FCC Form 393 entry to match its FCC Form 1200 entry. We disagree. First, the proposed adjustment was not made on a timely basis, as it was filed after the date of the First Order. Once an operator has filed FCC Forms with the Commission, each of which requires a signed certification statement that the information on the FCC Form is true and correct, we are entitled to act upon that information.<sup>15</sup> Once we have released an order concerning those FCC Forms, we cannot ordinarily allow an operator to submit additional FCC Forms on appeal with information that should have been submitted with the original certification, unless we have requested the additional information.<sup>16</sup> Furthermore, as the Cable Service Bureau stated in the Second Order, and as Operator previously argued, the FCC Form 393 and FCC Form 1200 instructions are not identical. In requesting that we accept \$83,792 on Line 204 of the FCC Form 393, Operator contradicts the FCC Form 393 instructions as well as its own previous argument. In support of its argument, Operator cites the answer to Question 9 of a July 30, 1993 Public Notice<sup>17</sup> that lists certain criteria that must be met if an Operator is seeking to use the most recent monthly equipment figure as opposed to the annual average monthly figure on the FCC Form 393. However, Operator fails to satisfy any of the listed criteria, most notably, that there must be no material difference in the result from using the substituted figure.<sup>18</sup> Therefore, we reject Operator's argument.

7. Based on our review of Operator's FCC Form 393, Operator's MPR is \$13.00 for the period from September 13, 1993 (the date the first valid complaint was filed with the Commission) through May 14, 1994. Because Operator's actual CPST rate of \$13.22, effective September 13, 1993 through May 14, 1994, exceeds its MPR of \$13.00, we find Operator's actual CPST rate of \$13.22, effective September 13, 1993 through May 14, 1994, to be unreasonable.

8. In its Petition, Operator also argues that the Cable Services Bureau used the wrong figure on Line I2a (Monthly Equipment Cost per Subscriber) when revising Operator's FCC Form 1200 in the Second Order. We agree that a clerical error was made and our revised FCC Form 1200 MPR of \$13.00 matches Operator's calculated MPR. Operator added a channel on June 1, 1994. In the Second Order, the Cable Services Bureau allowed Operator an additional \$0.29 for external costs associated with the added channel. Therefore, Operator's MPR for the period from May 15, 1994 through May 31, 1994 is \$13.00 and

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<sup>15</sup> See *In the Matter of Meredith Cable*, 14 FCC Rcd 9202 at ¶ 11 (CSB 1999).

<sup>16</sup> *Id.* The cases cited by Operator in its Petition at p. 4, n. 11, for the proposition that the Commission must adhere to the same standard that it applies to local franchising authorities, that is, to allow timely corrections to submissions, are inapposite to the current situation. In those cases, the Commission stated that a local franchising authority should allow an operator a reasonable period of time to respond once a local franchising authority requests additional information.

<sup>17</sup> See *Public Notice, "Cable Television Rate Regulation, Questions and Answers Relating to FCC Form 393"* (released July 30, 1993).

<sup>18</sup> See *id.* at Question 9 ("Question: Instructions for Worksheet 1, Line 104. When can a representative month be used and under what circumstances with respect to calculating monthly equipment revenue? Answer: If there would be no material difference in result from using a representative month rather than the past fiscal year, and if the local franchising authority (or, where applicable, the FCC) finds it acceptable, the operator may use a representative month. The operator should attach a brief statement to Form 393 explaining why it is appropriate in that system's case.") Indeed, had Operator sought to rely on the Public Notice, it had the opportunity and failed to do so in its initial filing.

\$13.29 for the time period beginning June 1, 1994 through September 30, 1994. Because Operator's actual CPST rate of \$13.22, effective May 15, 1994 through May 31, 1994, exceeds its MPR of \$13.00, we find Operator's actual CPST rate of \$13.22, effective May 15, 1994 through May 31, 1994, to be unreasonable. We find Operator's actual CPST rate of \$13.22, effective June 1 through September 30, 1994, to be reasonable.

9. Upon review of Operator's FCC Form 1210, covering the period April 1, 1994 through September 30, 1994, we revised Operator's methodology for incorporating the external costs associated with the channel added on June 1, 1994, which increased Operator's Line B10 (Current Ext. Costs per Tier per Sub.) to \$2.5895.<sup>19</sup> Despite our adjustment, which we carried through Operator's subsequent filings, we accept Operator's calculated MPR of \$13.57, effective October 1, 1994 through December 31, 1994. Because Operator's actual CPST rate of \$13.57, effective October 1, 1994 through December 31, 1994, does not exceed its MPR, we find Operator's actual CPST rate of \$13.57, effective October 1, 1994 through December 31, 1994, to be reasonable. Upon review of Operator's next FCC Form 1210, we accept Operator's calculated MPR of \$15.01, effective January 1, 1995. Because Operator's actual CPST rate of \$15.01, effective January 1, 1995 through May 31, 1996, does not exceed its MPR, we find Operator's actual CPST rate of \$15.01, effective January 1, 1995 through May 31, 1996, to be reasonable.

10. Upon review of Operator's FCC Form 1210 covering the period October 1, 1995 through December 31, 1995, we adjusted Line C14 (Previous Ext. Costs per Tier per Sub.) to \$2.5895 to match Line D9 (Current Ext. Costs per Subscriber) of Operator's previous revised FCC Form 1210. Our adjustment reduced Operator's calculated MPR from \$17.36 to \$17.26. Because Operator's actual CPST rate of \$17.36, effective June 1, 1996 through March 31, 1998, exceeds its revised MPR, we find Operator's actual CPST rate of \$17.36, effective June 1, 1996 through March 31, 1998, to be unreasonable.<sup>20</sup> Upon review of Operator's FCC Form 1210 covering the period from January 1, 1998 through March 31, 1998, we find Operator's actual CPST rate of \$18.95, effective April 1, 1998, to be reasonable.<sup>21</sup>

11. Due to our granting of Operator's Petition in part, the refund plan that Operator submitted with its Petition is no longer applicable. Therefore, we calculate Operator's refund liability as follows: For the period from September 13, 1993 through May 31, 1994, we calculate an overcharge of \$0.22 per month per subscriber. Operator's actual CPST rate for this period was \$13.22 and its MPR was \$13.00. For the period June 1, 1996 through March 31, 1998, we calculate an overcharge of \$0.10 per month per subscriber.

<sup>19</sup> The Cable Services Bureau made this same adjustment in the Second Order at ¶ 15.

<sup>20</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. 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 FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

<sup>21</sup> In its Petition, Operator challenged an adjustment made to this last FCC Form 1210 by the Cable Services Bureau in the Second Order. Because we find Operator's actual CPST rate for this period to be reasonable, a resolution of the issue will not effect Operator's refund liability. Therefore we decline to address the merits of Operator's final argument.

Operator's actual CPST rate for this period was \$17.36 and its MPR was \$17.26. Our total calculation, including interest on the overcharges through October 31, 2002, equals \$109,984.00. Our calculation does not include franchise fees. We order Operator to refund this amount, plus any additional interest accrued to the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount, to its CPST subscribers within 60 days of the release of this Order. We dismiss Operator's request for stay as moot.

12. 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 filed by Operator is GRANTED IN PART AND DENIED IN PART TO THE EXTENT INDICATED HEREIN.

13. 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 TCA Cable Partners d/b/a TCA Cable TV, DA 98-2506, 13 FCC Rcd 23577 (CSB 1998) IS MODIFIED TO THE EXTENT INDICATED HEREIN and Operator's request for stay IS DISMISSED.

14. 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 \$13.22, charged by Operator in the community referenced above, effective September 13, 1993 through May 31, 1994, IS UNREASONABLE.

15. 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 June 1, 1994 through May 31, 1996, ARE REASONABLE.

16. 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 \$17.36, charged by Operator in the community referenced above, effective June 1, 1996 through March 31, 1998, IS UNREASONABLE.

17. 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 \$18.95, charged by Operator in the community referenced above, effective April 1, 1998, IS REASONABLE.

18. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$109,984.00, plus any additional interest accruing between October 31, 2002 and the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount within 60 days of the release of this Order.

19. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

