

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

In the Matter of	)	
	)	CUID Nos. NJ0001 (Absecon)
Lenfest Atlantic, Inc.	)	NJ0005 (Somers Point)
	)	NJ0006 (Atlantic City)
Refund Plan	)	NJ0015 (Millville)
	)	NJ0030 (Ocean City)

**ORDER**

**Adopted: February 18, 1998**

**Released: February 26, 1998**

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

1. In this Order we consider the refund plans filed by the above-captioned operator ("Operator")<sup>1</sup> in the above-captioned communities pursuant to our orders listed in Appendix A ("Refund Orders").<sup>2</sup> Our review of Operator's refund plans reveals that the refund plans do not comply with the requirements of the Refund Orders.

2. In each of its refund plans Operator states that it does not dispute the Commission's findings, regarding its CPST rates, however, Operator raises an issue which Operator believes requires a calculation of the refund amount which differs from the calculation prescribed in the Refund Orders. Operator did not file petitions for reconsideration or applications for review of the Refund Orders. Consequently, Operator is now attempting to raise in its refund plans an issue concerning inter-tier offsets that it failed to properly place before the Commission in accordance with the Commission's Rules.<sup>3</sup>

3. Specifically, Operator argues, in its refund plans, that it is entitled to offset its undercharges on its basic service tier ("BST") with its overcharges on its cable programming services tier ("CPST"). The Commission has addressed the issue of inter-tier offsets in *Cencom Cable Income Partners* ("*Cencom*").<sup>4</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

<sup>1</sup> On June 27, 1996, Regina Famiglietti Pace, Counsel for Lenfest Atlantic, Inc., filed a notification of change in ownership pursuant to 47 C.F.R. Section 76.400.

<sup>2</sup> The Refund 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>3</sup> See Sections 1.101 - 1.120 of the Commission's Rules, 47 C.F.R. Sections 1.101 - 1.120.

<sup>4</sup> *In the Matter of Cencom Cable Income Partners II, L.P.*, FCC 97-205 (released June 13, 1997).

Further Notice of Proposed Rulemaking]<sup>5</sup> that cable operators should not balance low BST rates with CPST rates that exceed the maximum permitted rate for the tier."<sup>6</sup> Based on the Commission's holding in *Cencom* we have determined that Operator's refund plans are unacceptable and that Operator has failed to comply with the Refund Orders. Operator shall have thirty days from the release of this Order to resubmit refund plans which comply with this Order and with the Refund Orders.

4. Accordingly, IT IS ORDERED, pursuant to Section 76.962 of the Commission's Rules, 47 C.F.R. Section 76.962, that Operator's refund plans ARE NOT ACCEPTED.

5. IT IS FURTHERED ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. Section 76.961, that Operator revise its refund plans as detailed herein and resubmit its plan to the Chief, Cable Services Bureau, within thirty days of the release of this Order.

6. This action is taken under delegated authority pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. Section 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth W. Beaty  
Chief, Financial Analysis and Compliance Division  
Cable Services Bureau

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<sup>5</sup> 8 FCC Rcd 5631 (1993).

<sup>6</sup> *Concom* at para. 22 (footnote omitted).

**APPENDIX A**

1. In the Matter of Sammons Communications, Inc., Absecon, New Jersey, CUID NJ0001;  
Somers Point, New Jersey, CUID NJ0005; Ocean City, New Jersey, CUID NJ0030;  
10 FCC Rcd 10022 (1995)
2. In the Matter of Sammons Communications, Inc., Atlantic City, New Jersey  
CUID No. NJ0006, 10 FCC Rcd 5553 (1995)
3. In the Matter of Sammons Communications, Inc., Millville, New Jersey  
CUID No. NJ0015, 10 FCC Rcd 9311 (1995)