

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

In the Matter of	)	
	)	
Cablevision Systems	)	CUID No. NY0611 (City of Glen Clove)
	)	
	)	
Complaint Regarding	)	
Cable Programming Services Tier Rates	)	

**ORDER**

**Adopted: March 2, 1998**

**Released: March 5, 1998**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a complaint against the August 1, 1997 rate increase that the above-captioned operator ("Operator") implemented for its cable programming services tier ("CPST") in the community set forth above. Operator has attempted to justify its CPST rate through a benchmark showing on FCC Forms 1200, 1210 and 1235. This Order addresses only the reasonableness of the Operator's CPST rate of \$20.42 effective August 1, 1997.

2. The Communications Act<sup>1</sup> authorizes the Federal Communications Commission ("Commission") to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. If the Commission finds the rate unreasonable, it shall determine the correct rate and any refund liability.<sup>2</sup> The Telecommunications Act of 1996 ("1996 Act")<sup>3</sup> and our rules implementing the new legislation ("Interim Rules"),<sup>4</sup> require that complaints against the CPST rates be filed with the Commission by a local franchising authority ("LFA") that has received subscriber complaints. An LFA may not file a CPST rate complaint unless, within 90 days after such increase becomes effective, it receives more than one subscriber complaint.

3. Cable operators attempting to justify rates for the period beginning May 15, 1994 through a benchmark showing must use the FCC Form 1200 series.<sup>5</sup> Cable operators may also justify rate increases based on the addition and deletion of channels, changes in certain external costs, and inflation,

<sup>1</sup> Section 623(c) of the Communications Act of 1934, *as amended*, 47 U.S.C. Section 543(c) (1996).

<sup>2</sup> *See* 47 C.F.R. Section 76.957.

<sup>3</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>4</sup> *See* Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

<sup>5</sup> 47 C.F.R. Section 76.922(b)(6); *see also* Second Order on Reconsideration, 9 FCC Rcd at 4189 n. 195.  
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by filing FCC Form 1210.<sup>6</sup> FCC Form 1210 must be filed at least 30 days before new rates are scheduled to go into effect where the Commission has found the CPST rate to be unreasonable less than one year prior to the filing, or where there is a pending complaint against the CPST rate.<sup>7</sup>

4. FCC Form 1235 is an abbreviated cost of service filing used in cases of network upgrades. It allows cable operators to justify rate increases related to significant capital expenditures used to improve rate-regulated services. This option is extended only in cases of significant upgrades requiring added capital investment, such as bandwidth capacity and conversion to fiber optics, and for system rebuilds. Normal improvements and expansions of service will remain subject to the usual rate adjustments allowed by filings of FCC Forms 1210, 1220 and 1240. Cable operators that incur increases in operating costs associated with a significant network upgrade will be permitted to charge additional rates as justified by their FCC Form 1235 filing.

5. On December 8, 1997, the LFA filed a complaint regarding the August 1, 1997 increase in Operator's CPST rate in the community referenced above. In its complaint, the LFA asserts that it has received more than one subscriber complaint against Operator's CPST rate increase and verified that the first complaint was received on September 15, 1997, thereby triggering the Commission's jurisdiction to review the complaint. The valid complaint from the LFA triggers an obligation by the cable operator to file a justification of its CPST rates with the LFA.<sup>8</sup> Thus, in this case, Operator is required to justify the increase in its CPST rate which is the subject of the LFA's complaint. Operator has attempted to justify its August 1, 1997 CPST rate increase using FCC Forms 1210 and 1235 for the community set forth above.<sup>9</sup>

6. Operator's August 1, 1997 rate increase reflects not only the quarterly increase as reported on FCC Form 1210, but also recovery of costs for its network upgrade as reflected on FCC Form 1235. Operator initially filed its FCC Form 1235 on March 28, 1997 and selected the pre-approval option.<sup>10</sup> On January 7, 1998, Operator submitted a revised FCC Form 1235. Operator also chose to allocate its

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<sup>6</sup> 47 C.F.R. Section 76.922(d).

<sup>7</sup> 47 C.F.R. Sections 76.958 and 76.960.

<sup>8</sup> 47 C.F.R. Section 76.1402.

<sup>9</sup> According to Operator, "the FCC Forms 1210 and 1235 which apply to [CUID No. NY0611 (Glen Cove)] are identical to the forms already on file for the communities of Oyster Bay, Massapequa Park and Westbury." See Letter dated December 17, 1997 from Ms. Marti Green, Vice President, Law - Cable and Network Operations to Mr. Gary Remondino, Federal Communications Commission. See also In the Matter of Cablevision Systems, DA 97-2512 (released November 28, 1997).

<sup>10</sup> The pre-approval option is provided to assist operators in projecting cash flows and obtaining capital for the construction of upgraded cable systems. The FCC Form 1235 can be filed for pre-approval any time prior to the upgrade services becoming available to subscribers using projected upgrade costs. The Network Upgrade Add-on (Part III, Line 4), however, cannot be charged to subscribers until upgraded cable services become available and are providing benefits to customers of rate-regulated services. See FCC Form 1235 Instructions at 2.

Monthly Network Upgrade Add-on (Section III, Lines 4 and 5) to both its basic service tier ("BST") and its CPST rates. Such an election is consistent with the FCC Form 1235 instructions.<sup>11</sup>

7. Upon review of Operator's FCC Form 1200 and FCC Forms 1210, we find that Operator has justified a maximum permitted rate ("MPR") of \$16.50, effective April 1, 1997. Upon review of Operator's revised FCC Form 1235, we find that Operator has justified an MPR of \$4.08. Consequently, Operator has justified a combined MPR, for its CPST, of \$20.58. Therefore, we find that Operator's CPST rate of \$20.42, effective August 1, 1997, is reasonable.<sup>12</sup>

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator's CPST rate of \$20.42 effective August 1, 1997 in the community set forth above, IS REASONABLE.

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaint referenced herein IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

John E. Logan  
Deputy Chief, Cable Services Bureau

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<sup>11</sup> See FCC Form 1235 Instructions at 8.

<sup>12</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 any 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.