

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

In the Matter of)	
)	
TCI Cablevision of Georgia)	CUID No. GA0011 (Valdosta)
)	
Complaint Regarding)	
Cable Programming Services Tier)	
Rate Increase)	

ORDER

Adopted: January 17, 1997

Released: January 23, 1997

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

1. In this Order we consider a complaint against the rate increases of TCI Cablevision of Georgia ("TCI") for its cable programming services tier ("CPST") in Valdosta, GA, CUID No. GA0011. TCI has chosen to attempt to justify its CPST rates through benchmark showings on FCC Form 1200, FCC Forms 1210 and FCC Form 1240. This Order addresses the reasonableness of TCI's rates for the period February 28, 1995 to the present. We conclude, for the reasons discussed below, that the rate charged by TCI for the period February 28, 1995 through March 31, 1995 is unreasonable and the rates charged from April 1, 1995 to the present are reasonable.

2. The Communications Act¹ 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. The Cable Television Consumer Protection and Competition Act of 1992² ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber. The Telecommunications Act of 1996³ ("1996 Act") and our rules implementing the new legislation,⁴ require that complaints against the CPST rate be filed with the Commission by a local franchising authority ("LFA") that has received subscriber complaints. The filing of a valid complaint triggers an obligation on behalf

¹ Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c)(3) (1996).

² Pub. L. No. 102-385, 106 Stat. 1460 (1992).

³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996) ("*Interim Rules*").

of the cable operator to file a justification of its CPST rate.⁵ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁶

3. The Commission's original rate regulations became effective on September 1, 1993.⁷ The Commission revised its rate regulations effective May 15, 1994.⁸ Cable operators attempting to justify their rates through a benchmark showing for the period prior to May 15, 1994 must complete and file FCC Form 393.⁹ Beginning May 15, 1994, operators attempting to justify their rates through a benchmark showing must use the FCC Form 1200 series.¹⁰ Cable operators may file FCC Form 1210 to justify rate increases based on the addition and deletion of channels, changes in certain external costs, and inflation.¹¹ FCC Form 1210 must be filed at least 30 days before new rates are scheduled to go into effect when there is a pending complaint against the operator's CPST rate.¹² Operators may justify adjustments to 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.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴ If actual and projected costs are different during the rate year a "true-up" mechanism is available to correct estimated costs with actual cost changes.¹⁵ The

⁵ 47 C.F.R. Section 76.956.

⁶ 47 C.F.R. Section 76.957.

⁷ Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

⁸ Implementation of Sections of the Cable 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, FCC 94-38, 9 FCC Rcd 4119 (1994) ("*Second Order on Reconsideration*").

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 C.F.R. Section 76.922(d).

¹² 47 C.F.R. Section 76.958.

¹³ See In the Matter of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Thirteenth Order on Reconsideration, 11 FCC Rcd 388, 391 (1996) ("*Thirteenth Reconsideration Order*").

¹⁴ *Id.* at 392.

¹⁵ *Id.*

"true-up" requires operators to decrease their rates or alternatively permits them to increase their rates to make an adjustment for over or under estimations of these cost changes.¹⁶

4. A valid complaint was filed with the Commission on February 28, 1995 against TCI's February 14, 1995 increase in the CPST rate from \$11.10 to \$12.46. Upon review of TCI's FCC Form 1200, FCC Forms 1210 and FCC Form 1240, we find that TCI has not correctly calculated its maximum permitted rate for the period February 28, 1995 through March 31, 1995.¹⁷ It is therefore appropriate to make adjustments to TCI's calculations as discussed below.¹⁸

5. FCC Form 1210 Filing: To justify its February 14, 1995 increase, TCI filed an FCC Form 1210 covering the period April 1, 1994 through September 30, 1994 and setting a maximum permitted rate ("MPR") of \$11.10. In a supplemental filing, TCI claimed an additional \$1.20 for six channels added as of December 31, 1994 and \$.16 for programming cost increases for the first quarter of 1995, for a revised MPR of \$12.46. Because TCI may not increase rates based on increased costs until the end of the quarter in which they are incurred,¹⁹ we adjusted TCI's maximum permitted rate for the period of February 28, 1995 through March 31, 1995 to \$12.30 instead of \$12.46. Although TCI failed to demonstrate that its CPST rate was not unreasonable, we determine that the total overcharge per subscriber is *de minimis* and it would not serve the public interest to order a refund.

6. FCC Form 1240 Filing: TCI filed an FCC Form 1240 for the period beginning June 1996 through May 1997. TCI claimed an inflation factor on Lines C1-C3 of 1.0261 for both the true-up period and the projected period. Since this form was filed prior to the release of the latest inflation factor figures, we allow TCI to use the inflation factor of 1.0261 on line C1 and worksheet 1. However, for the projected period, the inflation factor will be subject to adjustment on the next FCC Form 1240 filing.

¹⁶ *Id.* The Commission granted TCI a waiver to allow TCI, in its initial filing of FCC Form 1240, to include cost adjustments over the period of time between the last date for which actual cost data is available and the effective date of TCI's new rates. The cost adjustments included for this period are subject to a true-up at the same time that the required true-up is performed on TCI's initial Form 1240 Projected Period Rates. See In the Matter of Annual Rate Adjustment System for Cable Services Rates - Request for Waiver of Requirements Contained in the Thirteenth Order on Reconsideration, DA 96-220, released February 22, 1996.

¹⁷ This finding is based solely on the representations of TCI. 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.

¹⁸ Information regarding the specific adjustments made to TCI's FCC Form 1200, FCC Forms 1210 and FCC Form 1240 filings can be found in the public file for CUID No. GA0011, which is available in the Cable Services Bureau's public reference room, or through the Commission's copy contractor, International Transcription Services (ITS), 1919 M Street N.W., Washington, DC, 20554, or by calling ITS at (202) 857-3800.

¹⁹ 47 C.F.R. Section 76.922.

7. Notwithstanding the above, we find TCI's MPR's from April 1, 1995 through the present to be justified and reasonable.

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rate charged by TCI in the City of Valdosta, GA, CUID No. GA0011 from February 28, 1995 through March 31, 1995 IS UNREASONABLE.

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaint against the CPST rate charged by TCI in the City of Valdosta, GA, CUID No. GA0011 IS GRANTED TO THE EXTENT DISCUSSED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

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