

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

DA 95-1073

In the Matter of) CUID Nos.
) KY0169, KY0426, KY0445,
) KY0452, KY0490, KY0491,
) KY0501, KY0518, KY0593,
) KY0616 (Louisville)
)
TKR Cable of Greater Louisville County, Kentucky) CUID Nos. KY0493, KY0519 (Anchorage)
)
) CUID No. KY0588 (Prospect)
)
) CUID No. KY0610 (Highland Heights)
)
Benchmark Filing To Support Cable Programming Service Price) CUID No. KY0670 (Crestview Hill)

MEMORANDUM OPINION AND ORDER

Adopted: May 11, 1995

Released: May 18, 1995

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

1. Here we consider complaints about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the Kentucky communities identified in the caption. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.¹

¹ The findings in this Order do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) ("*Second Order on Reconsideration*") the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS price under the new regulations. See para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. See 47 C.F.R. § 76.922(b)(4)(C).

2. Under the Cable Television Consumer Protection and Competition Act of 1992,² and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.³ Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.⁴ In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.⁵

3. The Commission's original rate regulations took effect on September 1, 1993.⁶ The Commission subsequently revised its rate regulations effective May 15, 1994.⁷ Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.⁸ Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.⁹ Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.¹⁰

² Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), as amended, 47 U.S.C. § 543(c) (1993).

³ 47 C.F.R. § 76.956.

⁴ 47 C.F.R. § 76.956(b).

⁵ *Id.*

⁶ Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

⁷ 47 C.F.R. § 76.922(b).

⁸ See *Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

⁹ *Id.*

¹⁰ 47 C.F.R. § 76.922(b)(6); see also *Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth in the Appendix.¹¹ Operator filed FCC Form 393 in response.

5. Operator asserts that its monthly CPS tier price of \$9.54 is justified by its benchmark filing because it is lower than the maximum permitted price of \$15.41 as calculated in the filing. However, upon review of Operator's submission, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. On Form 393, Part II, Worksheet 1, Line 101, Operator entered \$10.18 for the basic service tier and \$11.17 for the CPS tier as its rates as of the initial date of regulation. However, Operator's rate card shows that its actual prices were \$10.81 for the basic service tier and \$9.54 for the CPS tier. We therefore recalculated Line 101 using the prices for the basic and CPS tiers shown on Operator's rate card.

b. Operator's Form 393, Worksheet 1, Line 104 entry does not represent its current monthly equipment revenue as of the initial date of regulation. Instead of entering its current monthly equipment revenue, Operator entered a figure based on its prior equipment rates. Since Operator restructured its rates, including its equipment rates, on September 1, 1993, in an attempt to comply with the Commission's regulations, the monthly equipment cost figure on Line 34 of Step G of Part III should be close or identical to its Line 104 entry.¹² Accordingly, on Line 104 we have entered \$294,579.00, the same figure that appears on Line 34.

c. Because of these errors, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Therefore, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheet 1, on the basis of the

¹¹ We note that in some franchise areas the first valid CPS complaints were received by the Commission after February 28, 1994. These complaints were timely corrections of complaints that were filed before February 28, 1994 but were returned by the Commission pursuant to 47 C.F.R. § 76.954. See 47 C.F.R. § 76.955. For this reason, the corrected complaints are timely even though they were filed after the expiration of the limitation period set forth in 47 C.F.R. § 76.953(a).

¹² See Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates as of September 1, 1993 in accordance with our regulations . . . operators will enter on Line 104 the same, or nearly the same, number as on Line 301.").

most accurate data currently available for the date for which Operator filed.¹³ On its amended Form 393, Operator calculated the Inflation Adjustment Factor as of the end of October 1993 using data released on August 31, 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operator used in justifying its rates, of 1.030.

6. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies a maximum reasonable CPS tier price of \$9.48 per month (plus franchise fee) for the period from the filing of the first complaint in each franchise area (as set forth in the Appendix) to May 14, 1994.¹⁴ However, we further determine that the total overcharge per subscriber is *de minimis*. Therefore, it would not serve the public interest to order a refund.

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints against the cable programming service price charged by Operator in the areas referenced in the caption and in the Appendix herein, and all other complaints in these franchise areas related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted price of \$9.48 in the areas referenced in the caption and in the Appendix herein (plus franchise fee).¹⁵

9. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days

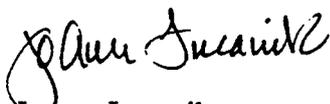
¹³ See 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

¹⁴ This finding is based solely on the representations of Operator and the modifications described herein. 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.

¹⁵ We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filing.

after its submission of the revised Form 1200 filing required above, a price that reflects the reduction in the CPS rate determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "JoAnn Lucanik". The signature is written in a cursive style with a large initial "J".

JoAnn Lucanik
Chief, Financial Analysis and Compliance Division
Cable Services Bureau

Appendix

<u>CUID No.</u>	<u>Date First Complaint Filed with FCC</u>	<u>Date Complaint Served</u>
KY0169	11-15-93	11-08-93
KY0426	10-19-93	10-14-93
KY0445	03-24-94	03-21-94
KY0452	10-15-93	10-12-93
KY0490	03-24-94	03-21-94
KY0491	03-24-94	03-21-94
KY0493	11-15-93	11-01-93
KY0501	03-24-94	03-21-94
KY0518	03-24-94	03-21-94
KY0519	10-15-93	10-12-93
KY0588	10-13-93	10-07-93
KY0593	10-04-93	10-07-93
KY0610	02-18-94	02-07-94
KY0616	03-24-94	03-21-94
KY0670	01-21-94	01-03-94