

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

In the Matter of	)	
	)	
Chattanooga Cable TV Company	)	CUID No. TN0062 (Chattanooga, TN)
	)	
	)	
Benchmark Filing to Support	)	
Cable Programming Service Price	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 8, 1996**

**Released: April 15, 1996**

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the rates that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its rates for its non-rebuild and rebuild offerings through separate benchmark showings on FCC Form 393. This Order addresses the reasonableness of Operator's rates only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the rates after that date.<sup>1</sup>

2. Under the Cable Television Consumer Protection and Competition Act of 1992,<sup>2</sup> 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.<sup>3</sup> Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service

<sup>1</sup> The findings in this Order do not in any way prejudice the reasonableness of the rates for CPS service after May 14, 1994 under subsequent 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 rates determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS rates under our subsequent regulations. See para. 3, *infra*. Further, to the extent that the rates as of March 31, 1994 are found to be excessive, reductions in Operator's rates for the period after May 14, 1994, may be required to reflect the fact that Operator's rates during the earlier period, which is used as the starting point to calculate its rates for the prospective period, were also unreasonable. See 47 C.F.R. § 76.922(b)(4)(C).

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

<sup>3</sup> 47 C.F.R. § 76.956.

showing.<sup>4</sup> In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.<sup>5</sup>

3. The Commission's original rate regulations took effect on September 1, 1993.<sup>6</sup> The Commission subsequently revised its rate regulations effective May 15, 1994.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.<sup>10</sup>

4. The first valid CPS complaint in the franchise area which is the subject of this Order was sent to Operator on October 13, 1993 and received by the Commission on October 18, 1993. By letter dated April 8, 1994, Operator requested that the Commission dismiss the complaint since Operator never received a copy of the complaint from the complainant. Operator's assertion does not persuade us that the complaint is invalid or should be dismissed. The complainant certified on its FCC Form 329 that he mailed a copy to Operator on October 13, 1993. Although Operator asserts that it did not receive a copy of the complaint at that time, under our rules service is complete upon mailing.<sup>11</sup> We will therefore consider October 13, 1993 as the date of service, and, in these circumstances, will not impose a penalty on Operator for failing to respond to the complaint in a timely manner. Operator also disputes the validity of subsequent complaints filed by other cable subscribers. Because we have accepted this complaint as properly filed, we find it unnecessary to rule on Operator's objections to these later filed complaints.

5. Initially, Operator filed a FCC Form 393 on April 8, 1994 which included its rebuild and non-rebuild offerings; subsequently, Operator filed amended separate Form 393s for its

<sup>4</sup> 47 C.F.R. § 76.956(b).

<sup>5</sup> *Id.*

<sup>6</sup> 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).

<sup>7</sup> 47 C.F.R. § 76.922(b).

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

<sup>9</sup> *Id.*

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

<sup>11</sup> See 47 C.F.R. § 1.47(f).

rebuild and non-rebuild offerings on March 6, 1996. As explained in its response to the Commission's Letter of Inquiry 93-51, Operator began building a new fiber optic system in July 1992.<sup>12</sup> Customers in Operator's non-rebuild areas were offered 15 channels on the CPS tier at a rate of \$12.27 (plus franchise fee) per month, while customers in rebuild areas were offered 30 channels on the CPS tier at a rate of \$15.57 (plus franchise fee) per month.

6. For its non-rebuild offering, Operator's actual CPS tier rate of \$12.27 (plus franchise fee) was above the maximum permitted rate of \$11.84 that Operator calculated for the CPS tier, and thus, Operator failed to demonstrate that its price for the CPS tier was not unreasonable. For its rebuild offering, Operator asserts that its monthly CPS tier rate of \$15.57 (plus franchise fee) is justified by its benchmark filing because its rate is lower than the maximum permitted charge of \$15.67 per month (plus franchise fee), as calculated in the filing. However, upon review of Operator's Form 393 filings, we have found that it has not correctly calculated its maximum permitted rate for either filing, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. Operator's Form 393, Part II, Worksheet 1, Line 104 entry does not represent its current monthly equipment revenue as of the initial date of regulation. Since Operator restructured its rates, including its equipment rates, on September 1, 1993, the current monthly equipment revenue figure it entered on Line 104 should have been close or identical to its equipment cost figure on Part III, Step G, Line 34. However, Operator's entries on these two lines differed substantially. We therefore adjusted Line 104 to equal the amount entered on Line 34.

b. Operator calculated the Inflation Adjustment Factor (Line 127, Worksheet 1, Part II) as of the end of March 1994. However, Operator's use of March 1994 as the date through which it calculated the inflation adjustment is impermissible. The instructions to FCC Form 393, page 11, require that the Inflation Adjustment Factor be calculated using the "number of *whole* months from September 30, 1992 to the date you will submit this form." (emphasis added) In general, a cable operator must submit a justification of its rates no more than 30 days after service of the earliest valid complaint.<sup>13</sup> Operator was served with the rate complaint on October 13, 1993. Since Operator was required to file a rate justification no later than November 12, 1993, Operator should have used October 1993 as the base date for calculating the Inflation Adjustment Factor. We must therefore recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the correct base date.<sup>14</sup> On July 29, 1994, the Department of

<sup>12</sup> Letter from David Watkins, Scripps Howard Cable Company, to Mr. Roy J. Stewart, Chief, Mass Media Bureau, Federal Communications Commission (January 13, 1994).

<sup>13</sup> See 47 C.F.R. § 76.956(a).

<sup>14</sup> 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).

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 third quarter of 1993. Using these GNP-PI figures, we calculate 1.030 as the Inflation Adjustment Factor through October 1993, the base date Operator should have used in justifying its rate.

7. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rates it was charging during the period in question. Operator's showings justify a maximum reasonable CPS tier price of \$10.10 per month (plus franchise fee) for its non-rebuild offering and \$15.46 per month (plus franchise fee) for its rebuild offering, for the period from October 18, 1993 to May 14, 1994.<sup>15</sup>

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

9. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced in the caption that portion of the amount paid for cable programming service for the period from October 18, 1993<sup>16</sup> to May 14, 1994 which exceeded the maximum price of \$10.10 per month (plus franchise fee) for its non-rebuild offering and \$15.46 per month (plus franchise fee) for its rebuild offering, plus interest to the date of the refund.

10. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated period, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so 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.

11. 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 franchise area referenced in the caption, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of

<sup>15</sup> 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.

<sup>16</sup> Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

May 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate of \$10.10 per month (plus franchise fee) for its non-rebuild offering and \$15.46 per month (plus franchise fee) for its rebuild offering.<sup>17</sup>

12. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a rate that reflects the reduction in the CPS rates determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones  
Chief, Cable Services Bureau

<sup>17</sup> 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.