

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

In the Matter of)	CUID Nos.:
)	OH 1078 Village of Waterville
Triax Associates I, L.P.)	MI 0191 Village of Mattawan
)	IN 0245 City of Columbia City
)	IN 0160 City of Nappanee
Small System Filing to Support)	
Cable Programming Service Price)	

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 1996

Released: April 16, 1996

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the rate that Triax Associates I, L.P. ("Triax") was charging for its cable programming service ("CPS") tier in the franchise areas referenced above. On November 20, 1995, Triax filed FCC Form 1230s seeking to justify its rate through the simplified small system cost of service procedures under the Commission's *Small System Order*.¹ In this Order we grant Triax's request for small system relief under the *Small System Order* and, based on our review of Triax's Form 1230 filings, deny the pending CPS complaints. Also, in this order we dismiss the complaint pending against the operator's rate in the City of Nappanee (CUID No. IN 0160) for lack of jurisdiction because the complaint addresses additional outlet charges as opposed to CPS rates.²

2. Under the Cable Television Consumer Protection and Competition Act of 1992,³ and the Commission's rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review a cable operator's rates for its CPS tier 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 rates.⁴ Under the Commission's rules, an operator may attempt to justify its rates through a benchmark showing, a cost-of-service showing, or a small system cost of service

¹ Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266 & 93-215, 10 FCC Rcd 7393 (1995) ("*Small System Order*").

² 47 CFR §76.923

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992); 47 U.S.C. §§ 534, 534(i) ("1992 Cable Act"). The 1992 Cable Act, amends Part 6 of the Communications Act, as amended, 47 U.S.C. § 521 et seq.

⁴ 47 C.F.R. § 76.956.

showing.⁵ In any case, the operator has the burden of demonstrating that its CPS rates are not unreasonable.⁶

3. The Commission's original rate regulations took effect on September 1, 1993.⁷ The Commission subsequently revised its rate regulations effective May 15, 1994.⁸ In a further effort to offer small cable companies administrative relief from rate regulation, the Commission amended the definition of small cable companies and small systems and introduced a simplified form of small system rate relief in the *Small System Order*. Cable systems serving 15,000 or fewer subscribers, and owned by a company having 400,000 or fewer subscribers, may elect to use the small cable system rate mechanism in lieu of other Commission rate processes, provided the Commission has not reached a final resolution on the rate complaint[s] filed against the system. Operators attempting to justify their rates through small system relief must file FCC Form 1230. If the maximum rate established on Form 1230 does not exceed \$1.24 per channel, the rate shall be presumed reasonable.⁹

4. We find that Triax is a company with fewer than 400,000 total subscribers and that the systems in question serve fewer than 15,000 subscribers, making it eligible for small system relief. Upon review of Triax's Form 1230 filings, we find that Triax has justified its CPS rate. Triax's CPS rate is less than \$1.24 per channel and, therefore, is presumed reasonable.¹⁰ There is nothing in the record that refutes this presumption; therefore, we find the rate to be not unreasonable.

5. On December 6, 1993, the complainant in the city of Nappanee, Indiana filed a corrected FCC Form 329 indicating that the complaint for CUID No. IN 0160 was filed against the additional outlet charge of \$3.50 per month. On January 7, 1994, Triax filed a motion to dismiss the corrected complaint on the grounds that it was filed against the additional charge and not the operator's rate for its CPS tier. Under the Cable Act of 1992, and the Commission's

⁵ 47 C.F.R. § 76.956(b) and § 76.934(h).

⁶ *Id.*

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

⁸ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-266, Second Order on Reconsideration Fourth Report and Order and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 ("Second Order on Reconsideration"); 47 C.F.R. § 76.922(b).

⁹ See *Small System Order* 10 FCC Rcd at 7428.

¹⁰ This finding is based solely on the representations of the operator. 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.

rules, rates for equipment that is used to receive the basic tier, including additional outlets, are regulated as part of the regulation of rates for the basic tier and thus are generally outside the Commission's jurisdiction.¹¹ We will, therefore, grant Triax's motion and dismiss the complaint for CUID No. IN 0160 filed on December 6, 1993.

6. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that Triax's request for small system relief is GRANTED.

7. IT IS FURTHER ORDERED that the CPS rate charged by Triax with respect to the above-referenced CUID numbers, excluding CUID No. IN 0160, IS JUSTIFIED.

8. IT IS FURTHER ORDERED that the complaints against the CPS rate charged by Triax with respect to the above-referenced CUID numbers, excluding CUID No. IN 0160, ARE DENIED.

9. IT IS FURTHER ORDERED that the complaint against the CPS rate charged by Triax with respect to CUID No. IN 0160 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹¹ See Cable Act Of 1992, section 623(b), 46 U.S.C § 543(b)(3); 47 CFR § 76.923(a).