

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

In the Matter of	)	
	)	
Bresnan Communications Company	)	CUID No. MI0138 (City of Gladstone)
	)	
	)	
Benchmark Filing to Support	)	
Cable Programming Service Price	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 8, 1996**

**Released: April 16, 1996**

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

1. Here we consider complaints about the rates the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator's response includes benchmark justifications on FCC Form 1200 and multiple FCC Form 1210s, the latest Form 1210 filed for the period ending in the first quarter of 1995. This Order addresses the reasonableness of Operator's rates only after May 14, 1994. We have already issued a separate order addressing the reasonableness of Operator's rate prior to 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 rates upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS rates.<sup>3</sup> Under our rules, an operator may attempt to justify its rates through either a benchmark showing or a cost-of-service showing.<sup>4</sup> In either case, the operator has the burden of demonstrating that its CPS rates are not unreasonable.<sup>5</sup>

<sup>1</sup> See *Bresnan Communications Company*, DA 95-283, 10 FCC Rcd 3428 (1995).

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

<sup>3</sup> 47 C.F.R. § 76.956.

<sup>4</sup> 47 C.F.R. § 76.956(b).

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

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 complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS rates were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their rates were in compliance with the revised rules from May 15, 1994 forward.<sup>8</sup> Operators attempting to justify their rates for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.<sup>9</sup> To justify their rates for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.<sup>10</sup> Operators may also justify rate increases based on the addition and deletion of channels, the changes in certain external costs, and inflation by filing FCC Form 1210.<sup>11</sup> Form 1210 must be filed at least 30 days before new rates are scheduled to go into effect where the Commission has found the cable programming service tier rate to be unreasonable less than one year prior to the filing, or where there is a pending complaint against the cable programming service tier rate.<sup>12</sup>

4. Operator asserts that its monthly CPS tier rates are justified because the rates are equal to or lower than the maximum permitted charge. Upon review of Operator's FCC Form 1200 series filings, we agree. We found no apparent errors in Operator's calculation of its maximum permitted CPS rates. Therefore, Operator's FCC Form 1200 series rates for the period under review are justified.

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<sup>6</sup> Order in MM Docket No. 92-266, Implementation of Sections of the Cable 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> 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, 4190 (1994) ("*Second Order on Reconsideration*").

<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> 47 C.F.R. § 76.922(d).

<sup>12</sup> *See* 47 C.F.R. § 76.960; *Second Order on Reconsideration*, 9 FCC Rcd at 4190.

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service rates charged by Operator in the franchise area referenced in the caption during the period following May 14, 1994 ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

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