

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

In the Matter of

Avenue TV Cable
Service, Inc.

CUID No. CA 0005
(City of Ventura, CA.)

Small System Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 1996; Released: February 5, 1996

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that Avenue TV Cable Service Inc. ("Avenue") was charging for its cable programming service ("CPS") tier in its City of Ventura, CA. franchise area. On October 26, 1995, Avenue filed FCC Form 1230 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 Avenue's request for small system relief under the *Small System Order* and deny the pending CPS complaints.

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 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.³ Under our 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 showing.⁴ In any case, the operator has the burden of demonstrating that its CPS rates 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 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 new 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.⁸

4. We find that Avenue is a company with fewer than 400,000 total subscribers and that the system in question serves fewer than 15,000 subscribers, making it eligible for small system relief. Avenue's CPS rate is less than \$1.24 per channel and, therefore, is presumed reasonable.⁹ There is nothing in the pleading that refutes this presumption, therefore, we find the rate to be not unreasonable.

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

6. IT IS FURTHER ORDERED that the CPS rate charged by Avenue with respect to the above-referenced CUID number, IS JUSTIFIED.

7. IT IS FURTHER ORDERED that the complaints against the CPS rate charged by Avenue, with respect to the above-referenced CUID number, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

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 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.

³ 47 C.F.R. § 76.956.

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

⁵ *Id.*

⁶ 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).

⁷ 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).

⁸ See Small System Order 10 FCC Rcd at 7428.

⁹ 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.