

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

In the Matter of	)	CUID Nos.	OR0064 (Lake Oswego)
	)		OR0242 (Aloha-Reedville)
	)		OR0283 (Beaverton)
	)		OR0288 (Tigard)
TCI Cablevision of Oregon	)		OR0289 (Forest Grove)
	)		OR0290 (Hillsboro)
	)		OR0304 (Lake Oswego)
	)		OR0317 (King City)
	)		OR0318 (Cornelius)
	)		OR0326 (Durham)
	)		OR0328 (Tualatin)
Complaints Regarding	)		OR0330 (Rivergrove)
Cable Programming Services Tier	)		OR0331 (Wilsonville)
Rates and Rate Increases	)		OR0332 (Wilsonville)

ORDER

Adopted: December 6, 1996

Released: December 11, 1996

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

1. In this Order we consider complaints regarding the rate increases of Columbia Cable of Oregon ("Columbia"), and Columbia's successor TCI Cablevision of Oregon ("TCI")¹, for the cable programming services tier ("CPST") in the communities designated above.² Columbia increased its CPST rate on March 1, 1995 in amount of \$0.95. TCI increased its CPST rate on June 1, 1996 in the amount of \$3.76. TCI has attempted to justify the CPST rate through a cost of service showing on FCC Form 1220 and on FCC Form 1240. We have already issued an

¹ TCI acquired this system from Columbia on November 30, 1995. See TCI's "Attachment to FCC Form 1240, Page 2" submitted with the letter from Marie Fulghum, Director of Regulatory Affairs, TCI West, Inc. to Bruce Crest, Administrator, Metropolitan Area Communications Commission, dated September 16, 1996.

² The Metropolitan Area Communications Commission ("LFA") originally filed a consolidated Form 329 CPST complaint on September 23, 1996 for 19 communities in the LFA's jurisdiction. The LFA subsequently retracted six communities from their original complaint because they could not validate receiving more than one complaint in the following communities: Banks (OR0325), Cornelius (OR0318), Gaston (OR0442), North Plains (OR0341), Sherwood (OR0327), Washington Co. (OR0333). See letter from Fred Christ, Communications Analyst, Metropolitan Area Communications Commission, to Gary Remondino, FCC, dated October 8, 1996.

order addressing the reasonableness of the CPST rates in effect before May 15, 1994³ in the communities for which valid complaints were filed.⁴ Accordingly, this order addresses only the reasonableness of the CPST rate increase of \$0.95 that became effective on March 1, 1995⁵ and the CPST rate increase of \$3.76 that became effective on June 1, 1996. We conclude that the March 1, 1995 and June 1, 1996 CPST rate increases are not unreasonable.

2. The Communications Act⁶ authorizes the Federal Communications Commission ("Commission") to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992⁷ ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchise authority ("LFA"). The Telecommunications Act of 1996⁸ ("1996 Act") and our rules implementing the new legislation,⁹ require that complaints against the CPST rates be filed with the Commission only by an LFA that has received subscriber complaints. An LFA may not file a CPST rate complaint unless, within 90 days after such increase becomes effective, it receives more than one subscriber complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPST rate. If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.

³ See *In the Matter of Columbia Cable of Oregon*, 10 FCC Rcd 10438 (1995). This Order included the following communities: Lake Oswego (OR0064), Beaverton (OR0283), Hillsboro (OR0290), Lake Oswego (OR0304). Because the CPST rate in these communities during the period September 1, 1993 through May 14, 1994 is under review by the Commission due to a Petition for Reconsideration and Stay filed by Columbia on October 23, 1995, we reserve the right to make further adjustments to the operator's underlying CPST rates upon completion of our review. In the immediate Order, we address only the rate increases which are the subject of the complaints in this proceeding.

⁴ The Commission received valid complaints regarding the CPST rate in effect prior to May 15, 1994 for four communities in this system. These communities are: Lake Oswego (OR0064), Beaverton (OR0283), Hillsboro (OR0290), Lake Oswego (OR0304).

⁵ The Commission received valid complaints regarding the CPST rate increase of March 1, 1995 for four communities in this system. These communities are: Beaverton (OR0283), Aloha-Reedville (OR0242), Tigard (OR0288), and Cornelius (OR0318).

⁶ 47 U.S.C. Section 543(c)(3)(1996).

⁷ Pub. L. No. 102-235, 106 Stat. 1460 (1992).

⁸ Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996).

⁹ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 ("Interim Rules").

3. The Commission has received valid complaints regarding Columbia's rate increase implemented on March 1, 1995.¹⁰ Accordingly, these complaints trigger the Commission's jurisdiction to review Columbia's CPST rates under the 1992 Cable Act.

4. On September 23, 1996, the LFA filed a consolidated complaint, for all 19 communities in its jurisdiction, with respect to TCI's \$3.76 CPST rate increase which was implemented on June 1, 1996. The LFA subsequently filed individual FCC Form 329 complaints for thirteen of its communities¹¹, and did not file individual complaints for the remaining six communities¹² because the LFA received "fewer than two consumer complaints from each ... during the prescribed ninety-day consumer complaint window."¹³ The complaints filed by the LFA are subject to the requirements of the 1996 Act. The LFA asserts that it has received more than one complaint against TCI's CPST rate increase in the thirteen communities for which the LFA filed complaints, thereby triggering the Commission's jurisdiction to review these complaints. The complaints from the LFA also trigger an obligation on behalf of the cable operator to file a justification of its CPST rate increase with the LFA.¹⁴ Thus, in this case, TCI is required to justify the increase in its CPST rate which is the subject of the LFA's complaints. In response to the LFA's complaints, TCI submitted an FCC Form 1240 for each community to justify its June 1, 1996 CPST rate increase.¹⁵ As required by our rules, the LFA included with its complaints copies of the FCC Form 1240 rate justification that TCI provided to the LFA.

¹⁰ The Commission received the first valid complaints against Columbia's March 1, 1995 CPST rate increase on March 2, 1995 for Aloha-Reedville (OR0242), on February 25, 1995 for Beaverton (OR0283), on March 3, 1995 for Tigard (OR0288), and on March 6, 1995 for Cornelius (OR0318).

¹¹ The LFA filed individual FCC Form 329 complaints on September 27 and September 30, 1996 for the following seven communities: Aloha-Reedville (OR0242), Durham (OR0326), Hillsboro (OR0290), King City (OR0317), Rivergrove (OR0330), Wilsonville (OR0331), and Wilsonville (OR0332). On October 8, 1996, the LFA filed individual FCC Form 329 complaints for the following six communities: Beaverton (OR0283), Forest Grove (OR0289), Lake Oswego (OR0064), Lake Oswego (OR0304), Tigard (OR0288), and Tualatin (OR0328). See letter from Fred Christ, Communications Analyst, Metropolitan Area Communications Commission, to Gary Remondino, FCC, dated October 8, 1996. The LFA has certified that it has received more than one complaint against TCI's June 1, 1996 CPST rate increase within 90 days of the date the increase first appeared on the subscribers' bills. See FCC Form 329 complaints filed by the LFA on September 27 and 30, 1996, and on October 8, 1996.

¹² The six communities are: Banks (OR0325), Cornelius (OR0318), Gaston (OR0442), North Plains (OR0341), Sherwood (OR0327), and Washington Co. (OR0333).

¹³ Letter from Fred Christ, Communications Analyst, Metropolitan Area Communications Commission, to Gary Remondino, FCC, dated October 8, 1996.

¹⁴ 47 C.F.R. Section 76.956.

¹⁵ See Letter from Marie Fulghum, Director of Regulatory Affairs, TCI West, Inc. to Bruce Crest, Administrator, Metropolitan Area Communications Commission (September 16, 1996).

5. To justify rates for the period beginning May 15, 1994 through a benchmark or cost of service showing, operators must use the FCC Form 1200 series. Operators may justify adjustments to their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹⁶ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁷ If actual and projected costs are different during the rate year a "true-up" mechanism is available to correct estimated costs with actual cost changes.¹⁸ The "true-up" requires operators to decrease their rates or alternatively permits them to increase their rates to make an adjustment for over or under estimations of these cost changes.¹⁹

6. Columbia's FCC Form 1220 filing seeks to establish that its CPST rate, including its CPST rate increase on March 1, 1995, is below the maximum permitted rate and is justified based on its cost of providing regulated cable service. According to information provided by Columbia in its FCC Form 1220 cost of service showing, the franchise area comprised approximately 65,174 CPST subscribers at the time of the August 15, 1994 filing. Columbia provided 36 CPST channels at that time. In this review process, we analyzed Columbia's CPST cost of service showing to ensure that the CPST rate, and March 1, 1995 CPST rate increase, were not unreasonable and to determine any associated refund liability.

7. In reviewing the cost of service showing, rate base and expense items have been evaluated to determine whether Columbia should be permitted to recover those items. Where a certain rate base or expense element was not supported, was excessive, or was unrelated to providing regulated cable service, such cost was disallowed in whole or in part.²⁰ Upon review of Columbia's FCC Form 1220 filing, we find that Columbia's monthly CPST rate, and March 1, 1995 CPST rate increase, has been justified.

¹⁶ See *In the Matter of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Thirteenth Order on Reconsideration ("Thirteenth Reconsideration Order"), 11 FCC Rcd 388, 391 (1996).

¹⁷ *Id.* at 392.

¹⁸ *Id.*

¹⁹ *Id.* The Commission granted TCI a waiver to allow TCI, in its initial filing of FCC Form 1240, to include cost adjustments over the period of time between the last date for which actual cost data is available and the effective date of TCI's new rates. The cost adjustments included for this period are subject to a true-up at the same time that the required true-up is performed on TCI's initial Form 1240 Projected Period Rates. See *In the Matter of Annual Rate Adjustment System for Cable Services Rates - Request for Waiver of Requirements Contained in the Thirteenth Order on Reconsideration*, DA 96-220, released February 22, 1996.

²⁰ The Commission made clear that the fact that an operator has incurred costs does not necessarily establish its right to recover those costs from subscribers. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking ("Rate Order"), 8 FCC Rcd 5631, 5794 n.619 (1993).

8. Upon review of the record before us, we find that Columbia has provided sufficient evidence to support its March 1, 1995 CPST rate increase of \$0.95.²¹

9. Upon review of the record before us, we find that TCI has provided sufficient evidence to support its June 1, 1996 CPST rate increase of \$3.76.²²

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the monthly CPST rate increase of \$0.95 charged by Columbia Cable of Oregon in the communities referenced above, beginning March 1, 1995 IS NOT UNREASONABLE.

11. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the monthly CPST rate increase of \$3.76 charged by TCI Cablevision of Oregon in the communities referenced above, beginning June 1, 1996 IS NOT UNREASONABLE.

12. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints against the CPST rate increase, effective March 1, 1995, charged by Columbia Cable of Oregon in the communities referenced above, ARE DENIED.

13. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the Metropolitan Area Communications Commission's complaints against the CPST rate increase, effective June 1, 1996, charged by TCI Cablevision of Oregon in the communities referenced above, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth W. Beaty
Chief, Financial Analysis and Compliance Division
Cable Services Bureau

²¹ This finding is based solely on the representations of Columbia. 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.

²² This finding is based solely on the representations of TCI. 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.