

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

In the Matter of	)	File No. EB-02-TC-016
	)	
Suburban Cable TV Co., Inc.	)	CUID No. PA1991 (Blue Bell)
	)	
Complaints Regarding	)	
Cable Programming Services Tier Rates	)	
and Petition for Reconsideration	)	

**ORDER**

**Adopted: July 16, 2002**

**Released: July 17, 2002**

By the Chief, Enforcement Bureau:<sup>1</sup>

1. In this Order, we consider a petition for reconsideration ("Petition") of Cable Services Bureau Order, DA 95-1226 ("Prior Order"),<sup>2</sup> filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").<sup>3</sup> Operator also requested a stay of the Prior Order, which was granted.<sup>4</sup> The Prior Order resolved complaints filed against the rates charged by Operator for its cable programming services tier ("CPST") in the community referenced above through May 14, 1994. In the Prior Order, the Cable Services Bureau stated that its findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."<sup>5</sup> In this Order we deny Operator's Petition, vacate the stay and address the reasonableness of Operator's CPST rates beginning May 15, 1994.

2. Under the provisions of the Communications Act<sup>6</sup> that were in effect at the time the complaints were filed, the Commission is authorized 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 1992 ("1992 Cable Act")<sup>7</sup> and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising

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<sup>1</sup> Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

<sup>2</sup> *See In The Matter of Suburban Cable TV Co., Inc.*, DA 95-1226, 10 FCC Rcd 6509 (CSB 1995).

<sup>3</sup> The term "Operator" includes Operator's successors and predecessors in interest.

<sup>4</sup> *See Petitions for Stay of Action*, DA 95-1795, 10 FCC Rcd 10591 (CSB 1995).

<sup>5</sup> Prior Order at n. 1.

<sup>6</sup> 47 U.S.C. §543(c) (1996).

<sup>7</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),<sup>8</sup> and the Commission's rules implementing the legislation ("Interim Rules"),<sup>9</sup> required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>10</sup> If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>11</sup>

3. During the first phase of rate regulation, from September 1, 1993 until May 15, 1994, the benchmark rate analysis and comparison with an operator's actual rates were calculated using the FCC Form 393.<sup>12</sup> The benchmark formula was revised, effective May 15, 1994.<sup>13</sup> Systems first becoming subject to rate regulation after May 15, 1994 were required to justify their initial regulated rates using forms in the FCC Form 1200 series.<sup>14</sup> Systems against which rate complaints were still pending when the Commission revised its benchmark formula were required to recalculate their benchmark rates as of May 15, 1994 using the FCC Form 1200.<sup>15</sup> Operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.<sup>16</sup> Operators may justify their rates on an annual basis using an 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.<sup>17</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>18</sup>

4. In its Petition, Operator argues that the Cable Services Bureau erred when imputing normalized taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates. The Cable Services Bureau previously addressed this issue at length in *Suburban Cable*.<sup>19</sup> The discussion in that case is directly on point and need not be repeated here. The Cable Services Bureau concluded that the benchmark rate methodology contemplates the unbundling of normalized taxes and it would be arbitrary and inconsistent for the Commission to build normalized taxes into the pricing of tier

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<sup>8</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>9</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

<sup>10</sup> See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

<sup>11</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

<sup>12</sup> See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5755-56, 5766-67, 5881-83 (1993).

<sup>13</sup> See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 9 FCC Rcd 4119 (1994).

<sup>14</sup> See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *In the Matter of Suburban Cable TV, Inc.*, DA 97-2032, 13 FCC Rcd 13111 (CSB 1997). See also, *In the Matter of Charter Communications*, DA 02-637 (CSB released March 20, 2002).

offerings and only unbundle actual taxes attributable to equipment costs. We conclude here, as the Cable Services Bureau did in *Suburban Cable*, that it was not error for the Cable Services Bureau to impute normalized taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates. Therefore, we deny Operator's Petition.

5. Upon review of Operator's FCC Form 1200, we accept Operator's calculated maximum permitted rate ("MPR") of \$10.12. Because Operator's actual CPST rate of \$11.58, effective May 15, 1994 through December 31, 1994, exceeds its MPR of \$10.12, we find Operator's actual CPST rate of \$11.58, effective May 15, 1994 through December 31, 1994, to be unreasonable. Upon review of Operator's FCC Form 1210 covering the period April 1, 1994 through December 31, 1994, we accept Operator's calculated MPR of \$10.22. Because Operator's actual CPST rate of \$11.58, effective January 1, 1995 through June 30, 1995, exceeds its MPR of \$10.22, we find Operator's actual CPST rate of \$11.58, effective January 1, 1995 through June 30, 1995, to be unreasonable. Upon review of Operator's FCC Form 1210 covering the period January 1, 1995 through June 30, 1995, we accept Operator's calculated MPR of \$12.33. Because Operator's actual CPST rate of \$11.58, effective July 1, 1995, does not exceed its MPR of \$12.33, we find Operator's actual CPST rate of \$11.58, effective July 1, 1995, to be reasonable.

6. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator IS DENIED.

7. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the stay of *In The Matter of Suburban Cable TV Co., Inc.*, DA 95-1226, 10 FCC Rcd 6509 (CSB 1995), granted in *Petitions for Stay of Action*, DA 95-1795, 10 FCC Rcd 10591 (CSB 1995), IS VACATED.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.58, charged by Operator in the community referenced above, effective October 5, 1993 (the date of the first valid complaint was filed with the Commission) through June 30, 1995, IS UNREASONABLE.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.58, charged by Operator in the community referenced above, effective July 1, 1995, IS REASONABLE.

10. 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 that portion of the amount paid in excess of the maximum permitted CPST rate of \$9.98 per month (plus franchise fees), plus interest to the date of the refund, for the period October 5, 1993 through May 14, 1994.

11. 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 that portion of the amount paid in excess of the maximum permitted CPST rate of \$10.12 per month (plus franchise fees), plus interest to the date of the refund, for the period May 15, 1994 through December 31, 1994.

12. 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 that portion of the amount paid in excess of the

maximum permitted CPST rate of \$10.22 per month (plus franchise fees), plus interest to the date of the refund, for the period January 1, 1995 through June 30, 1995.

13. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report with the Chief, Enforcement 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.

14. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the complaint referenced herein against the rates charged by Operator in the community referenced above IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau