

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

In the Matter)
)
Comcast Cablevision of Paducah) CUID No. KY0203 (McCracken County)
)
Petition for Reconsideration)

ORDER ON RECONSIDERATION

Adopted: February 28, 2002

Released: March 4, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 97-2144 ("Prior Order")¹ filed with the Federal Communications Commission ("Commission") on October 27, 1997 by the local franchising authority ("LFA") for the above-referenced community. In our Prior Order, we resolved a petition for reconsideration filed by the above-referenced operator ("Operator") of our Order, DA 97-1531², which resolved a complaint against Operator's November 1, 1996 cable programming services tier ("CPST") rate increase and found Operator's rate increase to be unreasonable. In response to our Prior Order, Operator filed an amended refund plan on January 11, 2002. In this Order, we deny the LFA's Petition and approve the refund plan as modified herein.

2. Under the Communications Act, 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.³ The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁴ and our rules in effect at the time the referenced complaint was filed, required the Commission to review CPST rates upon the filing of a valid complaint by a local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁵ and our rules implementing the legislation ("Interim Rules"),⁶ 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

¹ In the Matter of Comcast Cablevision of Paducah, Inc., DA 97-2144, 13 FCC Rcd 7891 (1998).

² In the Matter of Comcast Cablevision of Paducah, Inc., DA 97-1531, 12 FCC Rcd 23526 (1997).

³ 47 U.S.C. §543(c) (1996).

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

justification of its CPST rates.⁷ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁸

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁹ Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.¹⁰ Operators may justify 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.¹¹ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹²

4. In our Prior Order, we reviewed an amended FCC Form 1240 filed by Operator with its petition for reconsideration of our Order, DA 97-1531.¹³ We adjusted Line 201 of Worksheet 2 (CAPS Method Projected Period) on which Operator reported a previously unclaimed adjustment for CAPS method channel additions of \$0.91. Because the LFA included in the record a letter from Operator in which Operator states that it was only increasing its CPST rate by \$0.67 for the addition of six channels prior to the filing of the complaint, we reduced Operator's Line 201 from \$0.91 to \$0.83, allowing Operator to claim the difference between \$1.50 (the maximum CAPS adjustment permitted between January 1, 1995 and December 31, 1996) and \$0.67 (the CAPS adjustment previously taken by Operator).

5. In its Petition, the LFA argues that this adjustment was incorrect because Operator had already included the full \$1.50 in its actual CPST rate in effect prior to the filing of the complaint and therefore Operator was not entitled to claim an additional adjustment on its FCC Form 1240. In support of its argument, the LFA provides documentation of a neighboring franchise area's rate history and documentation that Operator raised its CPST rates at least one additional time after the \$0.67 channel addition increase but before the complaint was filed. The LFA argues that Operator set its actual rates based on FCC forms that included the full \$1.50 for channel additions. The LFA's documentation is insufficient to refute the notice indicating that Operator was increasing its CPST rates by \$0.67 due to the addition of six channels. The record supports Operator's argument that the additional rate increase was due to external costs increases and inflation and not for CAPS method channel additions. We find that the decision in our Prior Order to allow Operator to claim an additional \$0.83 for CAPS method channel additions not previously claimed is supported by the record in this case. Therefore, we will deny the LFA's Petition. Our decision in this matter does not affect any similar claims in other CPST rate complaint cases, and we agree with the LFA that, as a general matter, an operator may not include adjustments for CAPS method channels previously claimed.

⁷ See Section 76.956 of the Commission's rules 47 C.F.R. §76.956.

⁸ See Section 76.957 of the Commission's rules 47 C.F.R. §76.957.

⁹ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Operator filed as an unregulated operator in accordance with *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration*, MM Docket No. 92-266, 11 FCC Rcd 388 (1996).

6. Finally, we review the refund plan¹⁴ filed by Operator. Our review of Operator's refund plan reveals that the refund plan fulfills the requirements of our Prior Order provided Operator accrues interest up to the date of the refund.

7. Accordingly, IT IS ORDERED, pursuant to Sections 0.321 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.321 and 1.106, that the local franchising authority's petition for reconsideration of In the Matter of Comcast Cablevision of Paducah, Inc., DA 97-2144, 13 FCC Rcd 7891 (1998) IS DENIED.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.321 and 76.962, that Operator's refund plan IS APPROVED AS MODIFIED HEREIN, and that Operator implement its refund plan within 60 days of the date of this Order.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.321 and 76.962, that Operator file a certificate of compliance with the Chief, Cable Services Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁴ Operator calculated a total refund liability of \$44,338.05.