

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DA 94-1440

In the matter of)	
)	
Withdrawal of FCC Form 329	)	MI0493 Village of Fowlerville
Complaints Against Horizon	)	MI1062 Village of Laingsburgh
Cablevision	)	MI1089 Grass Lake Township
)	
Withdrawal of FCC Form 329	)	MI0020 City of Allegan
Complaints Against Mercom, Inc.	)	MI0035 Coldwater Township
	)	MI0036 City of Coldwater
	)	MI0103 Village of Quincy
	)	MI0180 City of Bronson
	)	MI0198 City of Plainwell
	)	MI0199 City of Otsego
	)	MI0529 Township of Ash
	)	MI1031 Village of Colon
	)	MI1069 Village of Blissfield
	)	MI1074 City of Petersburg

MEMORANDUM OPINION AND ORDER

Adopted: December 9, 1994 Released: December 12, 1994

By the Chief, Cable Services Bureau:

1. In each of the cases noted above, the local franchising authority (LFA) filed a complaint with this Commission alleging that the prices charged by Horizon Cablevision (Horizon) or Mercom, Inc. (Mercom) for cable programming tier (CPS) services in its community were unreasonably high. These complaints, and the local franchising authorities and filing dates, are noted at Attachment A. Between October 1 and November 10, 1994, many of these LFAs wrote to the Commission seeking to withdraw their CPS complaints.¹ In each case, the LFA was the only complainant who filed with this Commission. Our jurisdiction to regulate CPS rates arises with the filing of a valid complaint against those rates. The withdrawal of the only complaint against an operator's CPS rates in a community

¹ Some withdrawal letters were received prior to this four-week period; the dates of all withdrawal letters are noted in Attachment A.

constitutes the termination of our jurisdiction to regulate those rates. We will permit these complainants to withdraw their complaints, and our review of these filings will therefore be terminated.

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 CPS prices 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 prices.³ Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.⁴ In either case, the operator has the burden of demonstrating that its CPS prices 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 Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.⁸ Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.⁹ In each case captioned above, Horizon Cablevision did file an FCC Form 393 benchmark rate justification submission, and Mercom filed either an FCC Form 393 benchmark rate justification submission, or a cost of service rate justification submission.

4. This Commission has now received from each of the captioned local franchising authorities a letter stating that it wished to withdraw its CPS rate complaint against Horizon

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

³ 47 C.F.R. § 76.956.

⁴ 47 C.F.R. § 76.956(b).

⁵ *Id.*

⁶ *Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

⁷ *See Second Order on Reconsideration* at 4119; 47 C.F.R. § 76.922(b).


⁸ *See Second Order on Reconsideration* at 4190, paras. 150-152.

⁹ *Id.*

Cablevision or Mercom, Inc. Under our rules, this Commission's authority to regulate CPS cable rates arises when a valid complaint against those rates is filed. In each case noted here, the LFA is the only complainant against this operator in this community. Our mandate is to "protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such a system were subject to effective competition."¹⁰ While our rules forbid collusive agreements between operators and local franchising authorities regarding forbearance from rate regulation, there is no evidence of such an agreement here. In many of these letters, in fact, the LFA states that it has completed a rate review of the basic rates, and has found them reasonable. It is on the basis of this finding of reasonableness, rather than on the basis of an underlying agreement to forbear, that these LFAs are seeking to withdraw their CPS rate complaints. In light of this, we will grant these complainants permission to withdraw their complaints. Because our review of the rate justification showings is predicated on the existence of a rate complaint, and because these operators no longer face rate complaints in the above-noted communities, we are terminating our review of those filings.

5. Accordingly, IT IS ORDERED that permission to withdraw the FCC Form 329 rate complaints against cable programming service rates in the above-noted communities IS GRANTED, and the review of the resulting rate justification filings IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Meredith J. Jones
Chief, Cable Services Bureau

¹⁰ Conference Report on the Cable Act of 1992, at 62. See also, *Rate Order*, 8 FCC Rcd at 5669.

Horizon Cablevision CPS Complaint Withdrawals

<u>CUID No., Local Franchising Authority</u>	<u>Complaints Filed¹¹</u>	<u>Complaints Withdrawn</u>
MI0493 Village of Fowlerville	10/8/93	10/31/94
MI1089 Grass Lake Township	10/29/93	11/1/94
MI1062 Village of Langsburgh	11/30/93	11/4/94

Mercom, Inc. CPS Complaint Withdrawals

MI0020 City of Allegan	11/29/93	9/30/94
MI0035 Coldwater Township	11/12/93	10/7/94
MI0036 City of Coldwater	11/11/93	9/27/94
MI0103 Village of Quincy	9/28/93	10/13/94
MI0180 City of Bronson	11/15/93	9/23/94
MI0198 City of Plainwell	11/12/93	10/11/94
MI0199 City of Otsego	11/11/93	10/5/94
MI0529 Township of Ash	2/11/94	10/12/94
MI1031 Village of Colon	11/12/93	10/12/94
MI1069 Village of Blissfield	11/16/93	10/11/94
MI1074 City of Petersburg	12/15/93	10/4/94

¹¹ The date given is the date the LFA first filed a complaint. In some cases, the LFAs filed duplicate complaints at later dates.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DA 94-1441

In the matter of)	
)	
Withdrawal of FCC Form 329	)	MI0032 City of Cadillac
Complaints Against C-Tec Cable	)	MI0051 City of Manistee
Systems	)	MI0092 Filer Township
	)	MI0171 Village of Caro
	)	MI0281 City of Grayling
	)	MI0282 City of Frankfort
	)	MI0300 Eureka Township
	)	MI0344 Holland Charter Township
	)	MI0345 Park Township
	)	MI0371 City of Grand Haven
	)	MI0374 Springlake Township
	)	MI0381 City of Ionia
	)	MI0398 Whitewater Township
	)	MI0399 Milton Township
	)	MI0435 City of Zeeland
	)	MI0486 City of Coopersville
	)	MI0487 Allendale Township
	)	MI0497 City of Lake City
	)	MI0514 City of Manton
	)	MI0595 City of Wayland
	)	MI0596 Dorr Township
	)	MI0602 City of Durand
	)	MI0603 Village of Byron

MEMORANDUM OPINION AND ORDER

Adopted: December 9, 1994

Released: December 12, 1994

By the Chief, Cable Services Bureau:

1. In each of the cases noted above, the local franchising authority (LFA) filed a complaint with this Commission alleging that the prices charged by C-TEC Cable Systems (C-TEC) for cable programming service tier (CPS) services in its community were unreasonably high. These complaints, and the local franchising authorities and filing dates, are noted at Attachment A. Between September 20 and November 10, 1994, many of these LFAs wrote

to the Commission to withdraw their CPS complaints.¹ In each case, the LFA was the only complainant who filed with this Commission. Our jurisdiction to regulate CPS rates arises with the filing of a valid complaint against those rates. The withdrawal of the only complaint against an operator's CPS rates in a community constitutes the termination of our jurisdiction to regulate those rates. We will allow the withdrawal of these complaints, and our review of these filings will therefore be terminated.

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 CPS prices 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 prices.³ Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.⁴ In either case, the operator has the burden of demonstrating that its CPS prices 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 Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.⁸ Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC

¹ Some withdrawal letters were received prior to this four-week period; the dates of all withdrawal letters are noted in Attachment A.

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³ 47 C.F.R. § 76.956.

⁴ 47 C.F.R. § 76.956(b).

⁵ *Id.*

⁶ *Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

⁷ *See Second Order on Reconsideration* at 4119; 47 C.F.R. § 76.922(b).

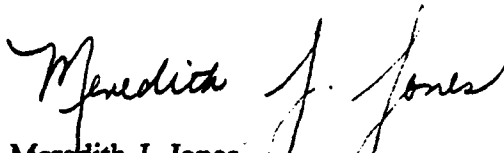
⁸ *See Second Order on Reconsideration* at 4190, paras. 150-152.

Form 393.⁹ In each case captioned above, C-TEC did file either an FCC Form 393 benchmark rate justification submission, or a cost of service rate justification submission.

4. This Commission has now received from each of the captioned local franchising authorities a letter stating that it wished to withdraw its CPS rate complaint against C-TEC. Under our rules, this Commission's authority to regulate CPS cable rates arises when a valid complaint against those rates is filed. In each case noted here, the LFA is the only complainant against this operator in this community. Our mandate is to "protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such a system were subject to effective competition."¹⁰ While our rules forbid collusive agreements between operators and local franchising authorities regarding forbearance from rate regulation, there is no evidence of such an agreement here. In many of these letters, in fact, the LFA states that it has completed a rate review of the basic rates, and has found them reasonable. It is on the basis of this finding of reasonableness, rather than on the basis of an underlying agreement to forebear, that these LFAs are seeking to withdraw their CPS rate complaints. We will accordingly allow these complainants to withdraw their complaints. Because our review of the rate justification showings is predicated on the existence of a rate complaint, and because these operators no longer face rate complaints in the above-noted communities, we are terminating our review of those filings.

5. Accordingly, IT IS ORDERED that permission to withdraw the FCC Form 329 rate complaints against cable programming service rates in the above-noted communities IS GRANTED, and the review of the resulting rate justification filings IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


Meredith J. Jones
Chief, Cable Services Bureau

⁹ *Id.*

¹⁰ Conference Report on the Cable Act of 1992, at 62. *See also, Rate Order*, 8 FCC Rcd at 5669.

C-TEC CPS Complaint Withdrawals

<u>CUID No., Local Franchising Authority</u>	<u>Complaints Filed¹¹</u>	<u>Complaints Withdrawn</u>
MI0032 City of Cadillac	11/18/93	9/20/94
MI0051 City of Manistee	11/19/93	10/3/94
MI0092 Filer Township	3/17/94	10/10/94
MI0171 Village of Caro	11/10/93	10/11/94
MI0281 City of Grayling	11/12/93	9/27/94
MI0282 City of Frankfort	11/18/93	10/3/94
MI0300 Eureka Township	11/12/93	10/12/94
MI0344 Holland Charter Township	11/16/93	10/7/94
MI0345 Park Township	11/19/93	10/13/94
MI0371 City of Grand Haven	11/18/93	9/28/94
MI0374 Springlake Township	11/18/93	10/12/94
MI0381 City of Ionia	11/19/93	9/22/94
MI0398 Whitewater Township	12/9/93	10/11/94
MI0399 Milton Township	11/29/93	10/3/94
MI0435 City of Zeeland	12/1/93	9/20/94
MI0486 City of Coopersville	11/16/93	9/27/94

¹¹ The date given is the date the LFA first filed a complaint. In some cases, the LFAs filed duplicate complaints at later dates.

MI0487 Allendale Township	11/16/93	9/26/94
MI0497 City of Lake City	11/18/93	10/11/94
MI0514 City of Manton	11/18/93	10/10/94
MI0595 City of Wayland	11/18/93	9/20/94
MI0596 Dorr Township	11/18/93	10/19/94
MI0602 City of Durand	12/1/93	9/20/94
MI0603 Village of Byron	11/24/93	10/11/94