



# GEORGIA MUNICIPAL ASSOCIATION

201 Pryor Street, SW • Atlanta, Georgia 30303 • 404/688-0472 • Fax: 404/577-6663

October 19, 1995

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, D.C. 20554

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THIS DATE  
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OCT 20 1995  
F.C.C.  
OFFICE OF THE SECRETARY  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

RE: Petition for Reconsideration of Thirteenth Order on Reconsideration

Dear Mr. Caton:

On behalf of the Georgia Municipal Association, and pursuant to 47 C.F.R. § 1.429, enclosed for filing in the above-referenced proceeding is the original and eleven (11) copies of the Petition for Reconsideration ("Petition") of the Federal Communications Commission's Thirteenth Order on Reconsideration, MM Docket Nos. 92-266.

Any questions regarding this filing should be referred to the undersigned.

Sincerely,

Donald W. Schanding  
Rate Analyst

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

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In the Matter of: )

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Implementation of Sections of ) MM Docket No. 92-266  
the Cable Television Consumer )  
Protection and Competition )  
Act of 1992: Rate Regulation )  
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DOCKET FILE COPY ORIGINAL

TO: The Commission

**PETITION FOR RECONSIDERATION BY**  
**THE GEORGIA MUNICIPAL ASSOCIATION**

James V. Burgess, Jr.  
Executive Director  
Georgia Municipal Association  
201 Pryor Street SW  
Atlanta, Georgia 30303  
(404) 688-0472

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TO: The Commission

**PETITION FOR RECONSIDERATION BY  
THE GEORGIA MUNICIPAL ASSOCIATION**

Pursuant to 47 C.F.R. § 1.429, the Georgia Municipal Association (“GMA”) hereby submits this Petition for Reconsideration (“Petition”) in the above-captioned proceeding. GMA requests that the Federal Communications Commission (“FCC” or “Commission”) reconsider certain rules issued as part of the Thirteenth Order on Reconsideration<sup>1</sup>. Specifically, GMA requests the Commission to reverse its decision not to review an operator’s entire CPST rate when the Commission receives future cable programming service tier rate complaints, or to allow subscribers and local authorities one opportunity to file complaints regarding the existing CPST rates under the current rules.

GMA is a non-profit corporation with the principal objective of improving the quality of municipal government in Georgia. GMA is the only statewide organization dedicated solely to serving the municipal viewpoint, with a membership representing 99.9% of the municipal population in Georgia. Therefore, we believe that GMA has a unique perspective regarding the effects that the changes in Commission policy will have on Georgia’s cities and cable subscribers.

\_\_\_\_\_  
<sup>1</sup>In re 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), FCC 95-397 (released September 27, 1995).

## DISCUSSION

The Commission decided in the Thirteenth Order on Reconsideration that the Commission will no longer review an operator's entire rate structure when the Commission receives a Form 329 rate complaint regarding the cable programming service tier ("CPST") (at 61-65, ¶¶154-164). We believe that doing so is unfair to franchising authorities and subscribers because many of them have never had the opportunity to request that the Commission review a cable operator's CPST rate structure under the current benchmark rules.

The Commission states: "In our view, subscribers and franchising authorities have had ample opportunity to file a complaint that would result in Commission review of operators' entire rate structure" and that "if subscribers and the franchising authority have not filed a CPST rate complaint, it indicates a level of satisfaction with their current rates that would not exist if they believed CPST rates were unreasonable" (at 64-65, ¶164). However, in many franchise areas, subscribers and franchise authorities have never had any opportunity to request the Commission to review the CPST rate structure under the current rules, due to a loophole in the rules. It is therefore inaccurate to assume that the fact that subscribers and the franchising authority have not filed a CPST rate complaint indicates that subscribers and franchising authorities are satisfied with the rates. In many franchise areas, subscribers and franchising authorities would have complained if they were permitted to do so.

In its rules, the Commission required that any complaints regarding existing CPST rates be filed by February 28, 1994. At that time, reasonable rates were calculated for a majority of operators using FCC Form 393. In Georgia, many franchise authorities did not file rate complaints regarding the rates in effect at that time because, according to the cable operators' Form 393s, the operators' CPST rates were within the Commission's guidelines.

Approximately one month later, on March 30, 1994, the Commission released a new set of rules which made significant changes. The new rules required that reasonable rates be calculated using a new form, Form 1200. For a vast majority of cable operators, the permitted rates calculated using the new form (Form 1200) were lower than the rates calculated under the old form (Form 393).

Many franchising authorities received Form 1200s from their cable operators which showed, by the operators' own calculations, that the operators' actual CPST rates were higher than their permitted rates. In other words, the operators did initially adjust their rates on September 1, 1993 (to comply with the old rules), but did not adjust their rates during the Summer of 1994 (to comply with the new rules). Therefore, the Summer of 1994 was the first time that the CPST rates became unreasonable, not because the actual rates rose, but because the permitted rates fell. Many operators never reduced their CPST rates to reasonable levels. Because the deadline to file complaints about initial rates was February 28, 1994, franchising authorities and subscribers have been unable to bring the clearly unreasonable rates to the attention of the Commission.

The following is just one of many examples we have encountered which demonstrate that franchising authorities have not been permitted to complain about unreasonable CPST rates. In

November, 1993, an operator submitted Form 393, which shows a permitted CPST rate of \$14.16, and an actual rate of \$14.05, or \$0.11 less than permitted. Because the Form 393 showed that the operator's CPST rate was within the Commission's guidelines, the franchising authority decided not to file a rate complaint before February 28, 1994. On March 30, 1994, the second set of benchmark rate rules was released. As required by the new rules, the operator filed new forms with the franchising authority in the Summer of 1994. The operator's Form 1210 shows a permitted CPST rate of \$13.45 as of July 15, 1994<sup>2</sup>. The July 15, 1994 actual rate was \$14.05, or \$0.60 higher than permitted. However, since the operator did not change its rate between February 28, 1994 and July 14, 1994, the franchising authority was not permitted to bring the overcharge to the Commission's attention. The operator's permitted CPST rate as of its most recent Form 1210 filing is \$13.65. Therefore, the monthly overcharge is now \$0.40. The operator has not changed its actual rate since September, 1993. Therefore, the franchising authority has never had an opportunity to complain about the CPST rate structure under the new rules, despite the fact that the rate is \$0.40 higher than permitted by the Commission's rules. In the past twelve months, the operator has overcharged by each subscriber more than \$5.00. We have witnessed many other instances similar to this one.

Until now, the cable operators have been content to continue to charge their current rates until the date that their permitted rates would rise above their actual rates, at which time the cable operators would probably file a rate increase request. Therefore, a positive, but unexpected, side-effect of the loophole in the rules has been that cable operators have avoided imposing rate increases for the CPSTs, because doing so would trigger a review of the entire rate, which would actually result in lower, rather than higher, rates. However, the change in policy described in the Thirteenth Order on Reconsideration allows cable operators to begin raising rates immediately, knowing that their past overcharges are now permanently built in to their initial rates. In the example above, the operator will "lock in" a permanent overcharge of \$0.40 as a result of the Thirteenth Order on Reconsideration.

Therefore, we believe that the Commission should continue to review cable operators' entire rate when it receives a Form 329 complaint, or, in the alternative, the Commission should permit franchising authorities and subscribers one opportunity to file a complaint regarding the operators' initial CPST rates. For example, the Commission could permit franchising authorities a thirty-day window of opportunity to file a complaint without the requirement that the complaint must be triggered by a rate increase. By doing so, the Commission could ensure that communities have had at least one opportunity to request the Commission to review the rates under the current benchmark rules. Also, doing so would not impose a substantial burden on cable operators because the "window" would exist only for a short period of time. It would then be more accurate to state that, in communities in which no complaint has been filed, subscribers and franchising authorities are satisfied with their cable rates, and that the rates must therefore be reasonable.

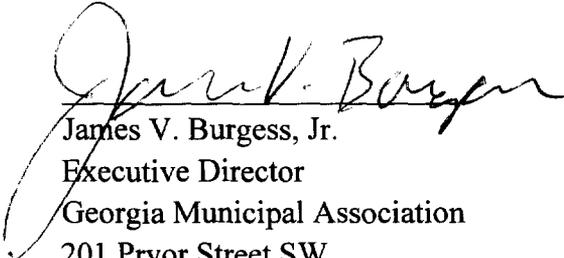
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<sup>2</sup>This operator filed Form 1210 at the time it filed Form 1200. Therefore, Form 1210, rather than Form 1200, is the relevant form for calculating the operator's permitted rates.

**CONCLUSION**

For the reasons stated above, GMA urges the Commission to reverse its decision in the Thirteenth Order on Reconsideration not to review an operator's entire CPST rate when the Commission receives future cable programming service tier rate complaints, or allow subscribers and local authorities one opportunity to file complaints regarding the existing CPST rates.

Respectfully submitted,

  
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