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

In the Matter of:	)	
	)	
TCI Cablevision of Eastern Iowa	)	CSB-A-0362 & CSB-A-0424
	)	
Application for Review of Local Rate Order	)	
Iowa City, Iowa (CUID No. IA0090)	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 2000 **Released: March 14, 2000**

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. TCI Cablevision of Eastern Iowa ("TCI-EI") filed an Application for Review[1] of the Order on Reconsideration released June 8, 1998, in *TCI Cablevision of Eastern Iowa*, 13 FCC Rcd 11,146 (CSB 1998) ("*Cablevision II*"), which denied reconsideration of *TCI Cablevision of Eastern Iowa*, 13 FCC Rcd 3080 (CSB 1998) ("*Cablevision I*"). No response to the Application has been filed.

2. *Cablevision I* denied TCI-EI's appeals of local rate orders issued by the City of Iowa City, Iowa, and held that the City reasonably refused to allow recovery as external costs of certain costs incurred by TCI-EI in relocating approximately 1,700 feet of cable plant. In this connection, *Cablevision I* found that TCI-EI failed to submit information demonstrating that the City's decision was unreasonable.[2] Additionally, the order affirmed the City's decision to update previously submitted inflation information.[3] TCI-EI's request for reconsideration of *Cablevision I* was denied in *Cablevision II*, which looked beyond the evidentiary matters considered in *Cablevision I* and further found that a clause in TCI-EI's franchise agreement required disallowance of the relocation costs. Specifically, *Cablevision II* pointed to a clause in Section 12-4-28 of the franchise agreement which provided that relocations would occur "at [TCI-EI's] expense," and construed that provision as requiring disallowance of the relocation costs.[4]

[1] *See* 47 C.F.R. § 1.115. Pursuant to TCI-EI's suggestion (*see* Application at n.1), action will be taken under delegated authority at the Bureau level rather than at the Commission level, and the Application will be treated as a petition for reconsideration filed pursuant to 47 C.F.R. § 1.106.

[2] *Cablevision I*, 13 FCC Rcd at 3087.

[3] The facts, applicable law, arguments of the parties, and a detailed analysis of those matters are set forth in *Cablevision I* and *Cablevision II* and need not be repeated here. Other matters addressed in these orders but not raised by the Application are not addressed herein.

[4] *Cablevision II*, 13 FCC Rcd at 11,148.

II. ANALYSIS AND DECISION

3. TCI-EI asserts that this franchise agreement clause obligating it to perform plant relocations "at its expense" governs the financial relationship between it as cable operator franchisee and the City as grantor of the franchise. TCI-EI argues that the clause has no impact on cable rates established pursuant to the Commission's regulations in general nor in the particular matter at issue here of whether relocation costs may be passed through as external costs required by the franchise agreement. On reconsideration, we agree with TCI-EI that the reliance in *Cablevision II* on the "at its expense" clause as an additional basis for denying pass through treatment of the relocation costs in issue was erroneous. The "at its expense" clause may preclude TCI-EI from passing relocation costs on to the City. The clause should not be construed as precluding pass through of relocation costs that otherwise qualify for such treatment under the Commission's cable rate regulations or precluding recovery of such qualifying costs through subscriber rates.

4. However, with respect to the cost of pole relocations qualifying as external costs eligible for pass through treatment, the Commission has stated, "… we will permit operators to pass through to subscribers the cost of meeting franchise requirements that they remove aerial facilities and place them underground. However, the external cost pass through should be limited to cases where the operator has been required to actually remove cable from utility poles and place the same underground."[5] The Commission further indicated that external cost treatment would not be accorded where such costs were incurred in the absence of a franchise requirement such as that involving a system up-grade or rebuild.[6] On the record before us, TCI-EI's relocations do not fit the conditions imposed for external cost pass through treatment. First, the record shows that the pole relocations at issue here would have occurred irrespective of any requirements of the franchise agreement. The record shows that previously existing poles, and some small amount of buried cable, were going to be demolished in the course of road construction operations.[7] Clearly, TCI-EI would have had to relocate its cable, or cease operating the affected portions of its cable system, notwithstanding any franchise agreement clauses. Second, nothing in TCI-EI's franchise agreement relating to pole relocations required the placing of any cable underground, as required by Section 76.925(a)(5) for qualification as franchise requirements for the purposes at issue here. Nothing in the Commission's *Thirteenth Reconsideration Order* supports TCI-EI's argument that the costs of pole to pole cable relocations qualify for pass through treatment as external costs, particularly where, as here, the relocations surely would have incurred in the absence of any specific franchise requirements. Finally, TCI-EI submitted nothing by way of new information with its latest pleading that fills the evidentiary deficiencies noted in paragraph 18 of *Cablevision I*.[8]

5. With respect to the City's updating of an inflation factor affirmed in *Cablevision I* and *Cablevision II*, TCI-EI effectively concedes that such action would be appropriate if the City's disallowance of relocation costs is affirmed. More particularly, TCI-EI argues that the other corrections the City made to its From 1240s would have virtually no impact on the filed rates and therefore should not provide justification for allowing an inflation factor update under the precedent cited in *Cablevision II*.[9] Since we again affirm the City's disallowance of the relocation costs at issue, TCI-EI's argument that the City's corrections will not impact on its filed rates is rendered moot.

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[5] *Id.*

[6] *Id*. at 442.

[7] *See* City Comments (dated November 22, 1996), at 6 (CSB-A-0362).

[8] *Cablevision I*, 13 FCC Rcd at 3087.

[9] *Cencom Cable Partners*, 12 FCC Rcd 7948 (CSB 1997). *See Cablevision II* at 11,149-50.

III. ORDERING CLAUSES

6. For the foregoing reasons, **IT IS HEREBY ORDERED** pursuant to authority delegated by Section 0.321 of the Commission's rules that the request for reconsideration of *TCI Cablevision of Eastern Iowa*, 13 FCC Rcd 11,146 (CSB 1998) filed by TCI Cablevision of Eastern Iowa **IS GRANTED IN PART and DENIED IN PART.**

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau