

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

In the Matter of)	
)	
Cablevision of Boston, Inc.)	
Cablevision of Brookline Limited Partnership)	File No. CSB –A-0463
)	
Appeal of Local Rate Order of the)	
Massachusetts Department of Public Utilities)	
CUID Nos. MA 0182, MA0219)	

MEMORANDUM OPINION AND ORDER

Adopted: April 26, 2000

Released: April 28, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Cablevision of Boston, Inc. and Cablevision of Brookline Limited Partnership (collectively “Cablevision”) filed an appeal of the September 22, 1997 rate order issued by the Cable Television Division of the Massachusetts Department of Public Utilities (“Department”) establishing permitted equipment and installation rates.¹ The Department filed an opposition, and Cablevision filed a reply. After reviewing the record herein, we grant the appeal.

II. BACKGROUND

2. Under the Commission’s rules, rate orders issued by local franchising authorities may be appealed to the Commission.² In ruling on an appeal of a local rate order, the Commission will not conduct a *de novo* review, but will sustain the franchising authority’s decision provided there is a reasonable basis for that decision, and will reverse a franchising authority’s decision only if the franchising authority unreasonably applied the Commission’s rules in its local rate order.³ If the Commission reverses a franchising authority’s decision, it will not substitute its own decision but will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission decision on

¹ Cablevision also filed a Petition for Stay Pending Review. This is being dismissed as moot in light of our disposition of the issues on the merits.

² 47 C.F.R. § 76.944.

³ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, 8 FCC Rcd 5631, 5731 (1993) (“*Rate Order*”); See also Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Third Order on Reconsideration, 9 FCC Rcd 4316, 4346 (1994) (“*Third Reconsideration*”).

appeal.⁴

3. An operator seeking to justify its existing or proposed rates for the basic service tier, equipment, or installation bears the burden of demonstrating that the rates conform with our rules.⁵ In determining whether the operator's rates conform with our rules, a franchising authority may direct the operator to provide supporting information.⁶ After reviewing an operator's rate forms and any other additional information submitted, the franchising authority may approve the operator's rates or issue a written decision explaining why the operator's rates are not reasonable.⁷ If the franchising authority determines that the operator's rates exceed the maximum permitted rate as determined by the Commission's rules, it may prescribe a rate different from the proposed rate or order refunds, provided that it explains why the operator's rate or rates are unreasonable and any prescribed rate is reasonable.

III. DISCUSSION

4. In their Petition for Review, Cablevision of Boston, Inc. and Cablevision of Brookline Limited Partnership (collectively "Cablevision") raise a single issue: did the Massachusetts Department of Public Utilities ("Department") err by refusing to allow Cablevision to set its 1997 converter and remote rates based upon the fair market value of those assets recorded on its books following the acquisition of Cablevision of Boston, Inc. of 100% of Cablevision's Boston franchise and 99% of its Brookline franchise?

The Department's rate order, dated September 22, 1997, contends that Cablevision was not entitled to revalue its converter and remote rates following the acquisition, and it should instead have derived its leased customer equipment rates from the original cost data reported in Cablevision's prior Form 1205 filing, which reflected year end 1994 cost data.

5. The Form 1205 filing at issue, dated April 18, 1997, was based upon fiscal year-end 1996 cost data, and set customer equipment rates in both Boston and Brookline. It proposed a monthly leased converter rate of \$2.45 and a monthly leased remote rate of \$0.15. When the Department objected to Cablevision's use of fair market valuations, Cablevision complied with the Department's request for an alternative Form 1205 filing on June 11, 1997. The alternative filing was based on fiscal year-end 1994 cost data. Cablevision believed this filing to be for informational purposes only, and maintained throughout the proceeding before the Department that the rates established in its original April 1997 filing accorded fully with the Commission's rules. The monthly converter and remote rates calculated in the June 1997 filing were \$1.71 and \$0.10, respectively.⁸

6. Cablevision relies primarily on the FCC Form 1205 Instructions and two prior Commission cases in its defense. According to Cablevision, the Form 1205 Instructions required it to establish its 1997 rates for converters and remotes based upon their gross book value at the close of fiscal year 1996. Moreover,

The Commission has made clear that "so long as an operator's financial records reflect its assets valued at their fair market value and those records are maintained in accordance

⁴ *Rate Order*, 8 FCC Rcd at 5732.

⁵ 47 C.F.R. § 76.937(a).

⁶ *See Rate Order* at 5718-19; *Third Reconsideration*, 9 FCC Rcd at 4348.

⁷ 47 C.F.R. § 76.936; *see Ultracom of Marple, Inc.*, 10 FCC Rcd 6640, 6641-42 (Cab.Serv.Bur. 1995).

⁸ Petition for Review of Rate at 3.

with generally accepted accounting principles, valuation of capital assets at book value, rather than original costs, is appropriate.”⁹

Cablevision notes that the circumstances of this case are identical to those of *King Videocable Company – Placerville* (“*King Videocable*”).¹⁰ In that case, the operator filed with the local franchising authority (“LFA”) proposed converter and remote rates that were based upon post-acquisition asset revaluations as reflected on the operator’s books and computed in accordance with GAAP. The LFA rejected the gross book values submitted by the operator, and sought instead to establish converter and remote values based upon original cost. The LFA argued, as in the immediate case, that the original cost valuation methodology more closely conformed to the “actual cost” standard mandated by the 1992 Cable Act and the Commission’s rules than would use of the operator’s gross book values. However, the Commission rejected the LFA’s arguments and directed the LFA to follow the instructions in the Commission’s rate forms.¹¹ Cablevision notes that the Commission’s ruling in *King Videocable* was fully consistent with its prior ruling in *Crown Media, Inc.*¹²

7. In its Opposition, the Department observes that its order may not be reversed unless it is found to be unreasonable, and that the cases upon which Cablevision relies are not reliable precedents for the immediate case and, therefore, are irrelevant. In particular, both the *King Videocable* and the *Crown Media* cases deal with pre-regulatory asset acquisitions. Consequently, requiring the operators in those cases to reestablish original equipment values would have been considerably more onerous than allowing the successor to establish new values after completion of the transfer. By contrast, Cablevision faces no comparable administrative burdens: its initial equipment rates and the valuations from which those rates were derived were set in accordance with the benchmark rate rules. Therefore, Cablevision’s position is less burdensome than that of the operators in *King Videocable* and *Crown Media* in two important respects. First, Cablevision did not have to seek out equipment cost data because such data were already in its previous filing. Second, the LFAs in *King Videocable* and *Crown Media* appear to have mistakenly applied cost-of-service standards to the benchmark rate filings at issue in those cases. Therefore, the Department concludes, “This case is distinguishable from the *Crown Media* and *King Videocable* cases on both the facts and applicable law. Consequently, the cases cited by Cablevision are not controlling here.”¹³

8. The Department also claims that Cablevision’s reliance upon the Form 1205 Instructions as controlling is misplaced, and that greater consideration must be given to 47 C.F.R. 76.923(f) and (g). These subsections provide standards for establishing charges for remote control units and converters, respectively. Subsection 76.923(f) requires that “[m]onthly charges for rental of a remote control unit shall consist of the average annual unit purchase cost of the type of remote leased, including *acquisition price* and incidental costs such as sales tax, financing and storage *up to the time it is provided to the customer* [emphasis added]” Subsection 76.923(g) states that “[t]he monthly charges for rental of converter boxes and other customer equipment shall be calculated in the same manner as for remote control units.”

9. The Department explains its application of these rules as follows:

⁹ *Id.* at 2.

¹⁰ 10 FCC Rcd 11076 (Cab. Serv. Bur. 1995).

¹¹ *Id.* at 11078 para. 13.

¹² 10 FCC Rcd 6626, 6627-28 (Cab. Serv. Bur. 1995).

¹³ Department Opposition at 4-5.

We applied the commonly understood definition of the phrase “acquisition price” to mean the actual amount the operator originally paid for the equipment. Perhaps most importantly, the rule limits additional equipment costs to those that are incurred by the operator “up to the time [the equipment] is provided to the customer”. In this case, Cablevision has previously provided the equipment to their subscribers and had previously established rates for that equipment in prior FCC Form 393 and FCC Form 1205 filings approved by the Department. The company chose to revalue its converters and remote control units as a result of the transaction which occurred *after* these units were in the hands of its subscribers and equipment values had been properly established under the benchmark rules. As we noted in our Rate Order:

... once the local franchising authority has established capital costs for equipment pursuant to the FCC’s rate regulations, it does not appear to be reasonable for the cable operator to use a subsequent transfer to revalue its capital costs on equipment already in the hands of subscribers, and use these higher costs to charge higher rates. Cablevision is essentially proposing that the new owner should be able to remove the previous costs established in FCC filings for converters and remote controls, and to substitute gross book values established at the time that the purchaser acquired the franchise. This approach fails to address the fact that accurate costs were presumably established for the equipment before the acquisition took place.¹⁴

10. Finally, although the Department does not dispute Cablevision’s characterization of its purchase transaction as having been conducted at arms-length, it contends that the transaction had no impact upon the managerial control of the company. Specifically, Charles F. Dolan was at all times pertinent to the equipment revaluation both the Managing General Partner of Cablevision of Boston Limited Partnership and the holder of 100% equity in the other General Partner, Cablevision Systems Boston Corporation. Although the transaction changed the legal structure of the company, it had no impact upon the issue of effective control or ownership. The Department believes that allowing a simple restructuring such as this to serve as a basis for revaluing its assets would encourage other operators to engage in similar endeavors to circumvent the Commission’s rules.

11. FCC Form 1205 is used to establish the amount of equipment costs to be unbundled in setting initial regulated BST rates and periodically thereafter to revise equipment rates based on the operator’s costs. The Commission’s Form 1205 Instructions require operators to complete Form 1205 “using financial data from the company’s general ledger and subsidiary records maintained in accordance with generally accepted accounting principles.”¹⁵ The instructions for Schedule A (Capital Costs of Service Installation and Maintenance of Equipment and Plant) and Schedule C (Capital Costs of Leased Customer Equipment) require that the operator enter the “gross book value . . . as of the date [the operator] closed books for the time period” covered by the form. The instructions do not distinguish between assets acquired prior to regulation and assets acquired later.¹⁶ Nor do they provide for use of data other than gross book value in the case of a company’s restructuring after rate regulation began. The Department’s interpretation

¹⁴ Rate Order at 6.

¹⁵ FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation, at 3 (June 1996).

¹⁶ *Id.* at 7, 13.

of the term “acquisition price” in Subsection 76.923(f) to mean initial acquisition prior to any change in ownership structure is not consistent with these Form 1205 Instructions and fails to recognize that assets were transferred with the ownership restructuring, even if effective control of the company remained unchanged.¹⁷ While we share the Department’s concern about the potential for abusive restructurings, the Department states it has not disputed Cablevision’s characterization of the transaction here as “arms-length.”¹⁸ As we said in *King Videocable*, “so long as an operator’s financial records reflect its assets valued at fair market value and those records are maintained in accordance with GAAP, valuation of capital assets at book value, rather than original cost, is appropriate.”¹⁹ Form 1205 is an integral part of the Commission’s guidelines for determining equipment rates based on actual cost, and local franchising authorities are required to follow their requirements. The Department’s Rate Order was not reasonable in requiring a cost valuation different from the valuation specified in the Form 1205 Instructions and, therefore, is being remanded for further review consistent with this Memorandum Opinion and Order.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT the Petition for Review of Rate Order filed by Cablevision of Boston, Inc. and Cablevision of Brookline Limited Partnership on October 22, 1997 IS GRANTED and the September 22, 1997 Rate Order of the Massachusetts Department of Public Utilities Cable Television Division IS REMANDED for further action consistent with this Memorandum Opinion and Order.

13. IT IS FURTHER ORDERED THAT the Massachusetts Department of Public Utilities Cable Television Division shall not enforce matters remanded for further consideration pending further action by the Department on those matters.

14. This action is taken pursuant to authority delegated by section 0.321 of the Commission’s rules. 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁷ In addition to the acquisition cost, the recoverable purchase price can include incidental costs incurred up to the time the equipment is leased to the subscriber. 47 C.F.R. § 76.923(f) as incorporated into 47 C.F.R. § 76.923(g).

¹⁸ Petition for Review at 7.

¹⁹ 10 FCC Rcd at 11078 para. 14.