

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

In the Matter of	)	
	)	
City of Chillicothe, Ohio	)	
v.	)	CSR-5320
FrontierVision	)	CUID OH0025
	)	
Petition for Special Relief	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 18, 2001**

**Released: June 21, 2001**

By the Deputy Chief, Cable Services Bureau:

1. The City of Chillicothe, Ohio (“City”) has asked for a ruling as to whether FrontierVision Partners, L.P., the local cable operator, can impose an additional outlet charge on customers in light of its predecessor’s commitment to discontinue such charges.<sup>1</sup> FrontierVision has opposed the request.<sup>2</sup> We conclude that FrontierVision is not barred from imposing charges consistent with the Communications Act and Commission rules.

2. Chillicothe was one of the communities where cable programming service tier (“CPST”) rates were resolved in the 1995 rate resolution between the Commission and Cox Communications.<sup>3</sup> The Resolution provided, *inter alia*, that Cox would “eliminate the current charges for regulated additional outlets” associated with the CPST,<sup>4</sup> and make refunds for additional outlet charges to subscribers in Chillicothe. The Resolution also set forth the maximum permitted CPST rate Cox could charge in Chillicothe once additional outlet charges were eliminated.<sup>5</sup> This maximum permitted rate included programming costs previously included in additional outlet charges rather than CPST rates.<sup>6</sup> The City acknowledges that the terms of the Resolution were satisfied.<sup>7</sup> Its concern is with a new additional outlet charge of \$0.49 imposed by FrontierVision in April 1997, after it had owned the system for a year.<sup>8</sup> The

<sup>1</sup> Letter from Mayor Margaret F. Planton to Federal Communications Commission (dated Oct. 7, 1998, filed Oct. 13, 1997) (“City Petition”).

<sup>2</sup> Opposition of FrontierVision Operating Partners, L.P. (Dec. 3, 1998) (“FrontierVision Opposition”).

<sup>3</sup> *Cox Communications, Inc. and Times Mirror Cable Television, Inc.*, FCC 95-483, 11 FCC Rcd 1972 (1995) (“*Cox Rate Resolution*”).

<sup>4</sup> *Id.* at 1994, Attachment A, Terms of Resolution ¶ 12(h).

<sup>5</sup> *Id.* at 1999, Attachment A, Exhibit 3.

<sup>6</sup> *Id.* at 1983 ¶ 28.

<sup>7</sup> City Petition at 1.

<sup>8</sup> See City Petition, Attachment C, Letter from Donna Wright, FrontierVision, to City of Chillicothe (Apr. 10, 1997).

City questions whether FrontierVision could impose this charge under the terms of the Resolution. It seeks a rollback of the charge and refunds.

3. FrontierVision opposes the request. FrontierVision asserts that it was not a party to the Resolution and did not assume the obligations of the Resolution and that nothing in the Resolution binds subsequent purchasers of Cox systems to its terms.<sup>9</sup> FrontierVision describes the disputed charge as “a monthly BST [basic service tier] equipment charge for additional outlets,”<sup>10</sup> which the Commission’s rules permit.<sup>11</sup>

4. The Resolution resolved CPST rate issues pending before the Commission and established a basis from which future rate adjustments could be made consistent with the Commission’s rules. It addressed additional outlet charges alleged to be inconsistent with the Commission’s rate rules.<sup>12</sup> Nothing in the Resolution or the order adopting it precludes future charges imposed in compliance with Commission rules. Cost-based charges for the installation and monthly use of connections for additional television receivers are permitted by section 623(b)(3)(B) of the Communications Act and section 76.923(b), (h) of the Commission’s rules<sup>13</sup> and are recoverable as part of the Equipment Basket described in section 76.923.<sup>14</sup>

5. Charges for additional connections used to receive the basic service tier are subject to franchising authority review pursuant to the procedures established in section 76.933 of the Commission’s rules.<sup>15</sup> An additional outlet charge applied solely to CPST subscribers, as was the case with the charge addressed in the Resolution and *Cox Communications, Inc.*,<sup>16</sup> would have been subject to Commission review upon the timely filing of a complaint with the Commission.<sup>17</sup> In light of

---

<sup>9</sup> Opposition at 2, 5.

<sup>10</sup> FrontierVision Opposition at 2.

<sup>11</sup> Opposition at 6.

<sup>12</sup> See, e.g., *Times Mirror Cable Television of Orange County, Inc. (d/b/a/ Dimension Cable Services), Dana Point, CA*, 10 FCC Rcd 817, 824 (Cab. Serv. Bur. 1994) (additional outlet charge disallowed because operator failed to show any costs associated with the additional outlet), *vacated, Cox Rate Resolution*, 11 FCC Rcd 1977 n.20, 1988 ¶ 49 (1995) (the *Time Mirror* order was superseded by the order accepting the Resolution).

<sup>13</sup> 47 U.S.C. § 543(b)(3)(B); 47 C.F.R. § 76.923(b), (h).

<sup>14</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5823 ¶ 306 (1993); see *id.* at 5821-25.

<sup>15</sup> 47 C.F.R. § 76.933. See Communications Act § 632(a)(1), (2)(A), 47 U.S.C. § 543(a)(1), (2)(A).

<sup>16</sup> See *Cox Communications, Inc.*, DA 96-1286, 11 FCC Rcd 9864, 9869-70 (Cab. Serv. Bur. 1996).

<sup>17</sup> A franchising authority receiving more than one subscriber complaint about a rate increase within 90 days of the increase could file a complaint with the Commission no more than 180 days after the rate increase became effective. 47 C.F.R. § 76.1402; *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5937, 5946 (1996); Report and Order, 14 FCC Rcd 5296, 5318 ¶ 43 (1999). FrontierVision states its rate adjustments were implemented beginning May 22, 1997. FrontierVision Opposition at 2. Even if the additional outlet charge were a CPST charge and the City had received timely subscriber complaints, the City’s request for review filed October 13, 1998, more than 180 days after the rates became effective, would not serve as a valid complaint. We have no record of any other complaint from the City about this charge.

FrontierVision's description of the charge as a basic service tier charge, it appears to fall within the City's jurisdiction.

6. The record shows that FrontierVision filed FCC Form 1230 with the City. This form is used by eligible small cable systems electing to establish maximum permitted rates for regulated services and associated equipment with a minimally burdensome modified cost of service showing. An operator using Form 1230 shows the operating expenses and net rate bases associated with programming and with equipment,<sup>18</sup> determines the monthly per channel costs associated with these categories, and bundles the per channel costs to determine the maximum permitted rate.<sup>19</sup> This bundled rate will be rebuttably presumed reasonable if it is no higher than \$1.24 per channel.<sup>20</sup> The system can set rates at any level up to the rate generated by Form 1230.<sup>21</sup> Because Form 1230 includes equipment costs, no separate showing is necessary for equipment, and operators may establish equipment and installation rates in any manner they choose so long as the rates comply with the statutory directive that rates be based on actual cost.<sup>22</sup> Operators are not required to provide documentation when filing Form 1230, but the reviewing franchising authority can ask for enough information to evaluate the validity of the operator's methods for calculating costs.<sup>23</sup> The procedures in section 76.933 for cost of service filings apply to the franchising authority's review of Form 1230.<sup>24</sup>

7. The City also questions the fairness of the charge, alleging that only customers added to the system since May 1997 pay the charge. Although it appears that the City is concerned about FrontierVision's compliance with the uniform rate requirement, the record contains insufficient information and documentation to determine whether the uniform rate requirement is implicated. Generally, an operator whose video programming services are not subject to effective competition must charge for basic service, CPST, and associated equipment and installation pursuant to a rate structure that

---

<sup>18</sup> Operators filing Form 1230 have flexibility in how they allocate costs between programming tiers, equipment, and unregulated services. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7422 ¶ 58 (1995) ("*Eleventh Reconsideration*").

<sup>19</sup> See FCC Form 1230, Module A; Instructions for FCC Form 1230 at 2-3.

<sup>20</sup> 47 C.F.R. § 76.934(h)(5)(i); *Eleventh Reconsideration* at 7419 ¶ 54.

<sup>21</sup> *Eleventh Reconsideration* at 7424 ¶ 64. FrontierVision states it filed FCC Form 1230 with the City on or about April 15, 1997. FrontierVision's form shows a selected per channel rate for programming of \$0.74394 as compared to the ceiling of \$0.91 from Line A6. See Instructions for FCC Form 1230 at 3. FrontierVision's form shows a per channel monthly equipment revenue requirement on Line A9 of \$0.05. FrontierVision states it was recovering \$0.03 per channel from converters, installations, and additional outlets. It had 33 regulated channels at the time it completed its rate form. FrontierVision Opposition at 9-10 & nn.30-32, citing City Petition at Attachment F (FrontierVision P&L Summary for the quarter ending March 31, 1998); FrontierVision Opposition, Exhibit 3 (FrontierVision FCC Form 1230).

<sup>22</sup> 47 U.S.C. § 543(b); *Eleventh Reconsideration* at 7419 ¶ 54, 7423 ¶ 63.

<sup>23</sup> *Eleventh Reconsideration* at 7424 ¶ 64.

<sup>24</sup> *Id.* Section 76.933 provides that an operator's rates may go into effect 30 days after submission unless the franchising authority issues a written order tolling the effective date. For cost of service filings, the franchising authority can toll the effective date for an additional 150 days. To preserve its ability to order refunds if it disapproves any portion of the rates after they take effect, the franchising authority must issue a written accounting order before the end of the tolling period. 47 C.F.R. § 76.933(a)-(c). FrontierVision states it is not aware of any tolling order, accounting order, or rate decision from the City. FrontierVision Opposition at 9.

is uniform throughout each franchise area in which cable service is provided.<sup>25</sup> Cable operators may establish reasonable categories of service and customers with separate rates and terms and conditions of service.<sup>26</sup> Furthermore, cable operators may impose monthly equipment charges only for equipment they rent.<sup>27</sup>

8. Accordingly, pursuant to authority delegated by section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, IT IS ORDERED that the relief requested by the City of Chillicothe, Ohio in its letter filed October 13, 1998 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief  
Cable Services Bureau

---

<sup>25</sup> 47 C.F.R. § 76.984(a). *See* Communications Act § 632(d), 47 U.S.C. § 543(d).

<sup>26</sup> 47 C.F.R. § 76.984(b).

<sup>27</sup> *See* 47 C.F.R. § 76.923.