

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

In the Matter of)	
)	
COMCAST CABLEVISION OF DETROIT, INC.)	
)	CSB-A-0615
Appeal of Local Rate Order of the)	DA 00-2748
City of Detroit, Michigan)	
CUID MI1039)	

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: July 5, 2001

Released: July 9, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. The City of Detroit (“City”) has petitioned for reconsideration of certain portions of the Memorandum Opinion and Order in *Comcast Cablevision of Detroit, Inc.*, DA 00-2748, 15 FCC Rcd 24022 (2000) (“*Bureau Order*”), regarding the local rate appeal filed by Comcast Cablevision of Detroit, Inc. (“Comcast”), the franchised cable operator serving Detroit.¹ Comcast opposes reconsideration, and the City has replied.² For the reasons stated below, we deny reconsideration.

2. The City’s petition addresses four matters remanded in the *Bureau Order*: treatment of an allegedly shared channel, the PASS channel, on Comcast’s Form 1240; the true-up on Form 1240 for the transition from the quarterly to the annual rate adjustment methodology (the “gap” period); converter losses on Form 1205; and the impact of its adjustments to Comcast’s labor hours on Comcast’s uniform installation and maintenance rates on Form 1205.³ The City questions whether the *Bureau Order* shows the requisite deference to the City’s rate order, arguing that the Cable Services Bureau (“Bureau”) either overlooked the reasonable judgments of the City or shifted the burden from Comcast to the City, particularly in light of what the City characterizes as a failure by Comcast to provide adequate and timely support for its rate justification. In opposition, Comcast argues that the City cannot cut off reasonable

¹ City of Detroit, Petition for Reconsideration (Jan. 8, 2001) (“City Petition”). The City Petition is filed pursuant to 47 C.F.R. § 1.106 and directed to the Commission. Because section 1.106(a)(1) provides that a petition for reconsideration of actions taken pursuant to delegated authority will be acted on by the designated authority unless referred by that authority to the Commission, the Cable Services Bureau is the appropriate authority to address the City Petition.

² Opposition of Comcast Cablevision of Detroit, Inc. to Petition for Reconsideration (Feb. 2, 2001) (“Comcast Opposition”); City of Detroit, Reply (Feb. 13, 2001) (“City Reply”).

³ As an ancillary matter, the City argues that there will be no need to remand the City’s adjustment of the inflation factor if reconsideration is granted on the channel count and true-up issues. This issue is rendered moot by the disposition of the channel count and true-up issues herein.

factfinding with a consultant's report the City knew to be incorrect and has not carried its burden of showing why its rate prescription is correct.⁴

3. A cable operator justifies its rate proposal by using the appropriate Commission forms.⁵ If the franchising authority has questions or feels it needs clarifying or substantiating information, it has the right to request and receive such information. If the operator fails to provide the requested information, the franchising authority may hold the operator in default and mandate appropriate sanctions, including calculating a permitted rate based on the best information available at the time.⁶ The rate review process should include an opportunity for the cable operator to respond to the franchising authority's concerns.⁷ If the franchising authority finds the operator's proposed rate unreasonable, it must affirmatively demonstrate in its written decision why this is so and "why the prescribed rate is reasonable."⁸ To be reasonable, the prescribed rate must be calculated according to Commission requirements and forms.

II. DISCUSSION

A. Basic Service Tier

1. Channel Count

4. The *Bureau Order* found that the City had not demonstrated the reasonableness of its basic service tier rate prescription in two respects: how it handled revisions to Comcast's channel count, and disallowing the true-up for the gap period adjustment. These matters were remanded for further City consideration. The City questions the remand on the channel count issue, arguing that the City never received any explanatory statement from Comcast about the shared use of the disputed PASS channel prior to the Consultant's Report.⁹ Comcast opposes the petition because the City sought no explanation when reviewing Comcast's 1998 rate form, had received information the year before, and could independently verify the status from cable service provided to the City.¹⁰ The City states in reply "that the PASS channel was not present in the 1998 Comcast lineup in the FCC's projected period, because at the end of the true-up period Comcast dropped the channel."¹¹

5. As the *Bureau Order* pointed out, the Consultant's Report did not change the channel count Comcast used on its 1998 Form 1240, the form before the City, for either the true-up or the

⁴ Comcast Opposition at 3-4.

⁵ 47 C.F.R. § 76.937 (a), (b).

⁶ 47 C.F.R. § 76.937(d), (e); *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, 5718-19 (1993) ("*Rate Order*"); Third Order on Reconsideration, 9 FCC Rcd 4316, 4344 ¶ 77, 4348 ¶¶ 89-90 (1994) ("*Third Order on Reconsideration*").

⁷ 47 C.F.R. § 76.942(a); *Rate Order*, 8 FCC Rcd at 5723-24 ¶ 139 & n.367.

⁸ *Id.* ¶ 139; *Falcon Community Ventures I*, 13 FCC Rcd 12503, 12505 ¶ 5 (Cab. Serv. Bur. 1998).

⁹ City Petition at 10-11.

¹⁰ Comcast Opposition at 5-6.

¹¹ City Reply at 5.

projected periods based on the channel lineup accompanying the form.¹² The Consultant's Report changed the channel count during an earlier true-up period, the true-up period in Comcast's 1997 Form 1240, while apparently accepting the operator's channel count on the 1998 form. Because nothing in the record shows that Comcast had reason to know of the City's questions about its 1997 rate form before receiving the Consultant's Report, the *Bureau Order* expressed concern about the City's failure to address Comcast's response to the Consultant's Report.¹³ Neither the City's request for information addressed to the 1998 rate form nor the consultant's declaration that, after May 1, 1998, he "attempted to contact" Comcast's director of finance show this concern to have been unfounded.¹⁴ The *Bureau Order* also identified errors on the revised rate forms on which the City based its rate prescription,¹⁵ and the City has acknowledged that "the Consultant's Report may have inadvertently omitted line D5 of the revised 1998 Form 1240 to reflect the PASS Channel deletion."¹⁶ Even if the City was reasonable in adjusting Comcast's channel count, these errors affect the City's rate prescription and require a remand. Franchising authorities must adhere to the mathematical principles of the Commission's rate regulations in determining rates.¹⁷

2. Gap Period Adjustment

6. The City also seeks reconsideration of the *Bureau Order*'s remand on the gap period adjustment issue. The *Bureau Order* found that the Consulting Report unreasonably rejected Comcast's use of the gap period methodology approved in *Annual Rate Adjustment System* ("Waiver Order"),¹⁸ which allows operators transitioning from the quarterly to the annual adjustment methodology to project costs for the gap period on the first Form 1240 and true up the projections on the next rate form. The City argues on reconsideration that Comcast failed to provide a separate calculation and explanation of the basis for the projected costs as required by the *Waiver* and *Bureau Orders*.¹⁹ The separate calculation and explanation required of Comcast is the calculation described in Appendix A to the *Waiver Order*.²⁰ Appendix A states: "In the initial filing of Form 1240, the period of time for which actual data is available (the 'Actual True-Up Period') must be separated from the period of time for which actual data is not available (the 'Estimated True-Up Period'). A separate Maximum Permitted Rate for the True-Up Period should be calculated from each of these periods. This is done so that when the system files its second

¹² *Bureau Order* at ¶ 6. See Appeal of Comcast Cablevision of Detroit, Inc. From a Rate Order of the City of Detroit, Michigan, Exhibit 5, Consultant's Report, p. 2.

¹³ *Bureau Order* at ¶ 7.

¹⁴ See City Petition at 4, 10, citing to City Opposition to Appeal of Local Rate Order (Apr. 30, 1999) ("City Opposition"), Exhibits B, D. Comcast's response to the request for information was dated May 6, 1998. Appeal of Comcast Cablevision of Detroit, Inc. From a Rate Order of the City of Detroit, Michigan (Mar. 15, 1999) ("Comcast Appeal"), Exhibit 3. The record shows contact between the consultant and Comcast at the end of December 1998. See City Opposition, Exhibit H.

¹⁵ *Bureau Order* at ¶¶ 6-7.

¹⁶ City Petition at 10 n.2.

¹⁷ See *Maryland Cable Partners, L.P. v. City of Bowie, Maryland*, 13 FCC Rcd 5218, 5224 ¶ 14 (Cab. Serv. Bur. 1998).

¹⁸ *Bureau Order* at ¶ 10, citing *Waiver Order*, 11 FCC Rcd 16297 (Cab. Serv. Bur. 1996).

¹⁹ City Petition at 12.

²⁰ *Waiver Order*, 11 FCC Rcd at 16301 ¶ 15.

Form 1240 and performs a true-up on the Estimated True-Up Period a second time, the effects of the true-up performed in the initial filing can be taken into account.”²¹ The appendix further explains how adjustments are carried through the form and treated in the second Form 1240.²² As Comcast points out in its Opposition, its 1998 rate form was the second Form 1240 and simply trued up the estimates from the first form.²³ The *Bureau Order* found Comcast had followed the *Waiver Order* instructions,²⁴ and the City has not argued to the contrary.

B. Equipment

1. Converter Losses

7. The *Bureau Order* was unable to find that the City was reasonable in rejecting Comcast’s converter losses as insufficiently supported.²⁵ The City seeks reconsideration, arguing that the *Bureau Order* fails to recognize the inadequacy of Comcast’s response to the City’s information request for “sufficient documentation such that the calculation can be recreated including detail of assets by vintage year showing gross book value and accumulated depreciation as of [sic] December 31, 1996.”²⁶ Comcast supports the *Bureau Order*.²⁷ The *Bureau Order* recognized the inadequacy of Comcast’s initial response but could not find the City reasonable in rejecting Comcast’s subsequently submitted general ledger page, which showed the year-end converter loss expense as of December 31, 1996. The City had accepted a similar showing in the past and for other depreciation accounts. The City’s petition does not address the seeming arbitrariness of rejecting the general ledger information showing converter losses for the 1998 rate form without making clear to Comcast that more was expected.²⁸ In its Reply, the City questioned the factual underpinnings of the *Bureau Order*, arguing that the general ledger page showing December 31, 1996 converter losses showed an accumulated depreciation category, not converter loss expense. The general ledger page provided by Comcast was for “converter loss.”²⁹ When writing off converter losses, the amounts debited to converter loss expense and credited to accumulated depreciation are equal. The City’s semantic point does not require reconsideration of the *Bureau Order*.

²¹ *Id.* at 16303.

²² *Id.* at 16303-05.

²³ Comcast Opposition at 7-8.

²⁴ *Bureau Order* at ¶¶ 9-10.

²⁵ *Id.* ¶ 19.

²⁶ City Petition at 12 (annotation in pleading).

²⁷ Comcast Opposition at 8-9.

²⁸ In response to the City’s request for information, Comcast provided a converter depreciation schedule by vintage year, including the amount of depreciation taken in 1996 for each vintage year and the total 1996 depreciation. It narratively stated that this total included the \$295,988 in converter loss expense at issue here. Its general ledger page sent to the City’s consultant by facsimile on December 29, 1998 shows the accumulated December 31, 1996 converter loss as \$295,988. *See* Comcast Appeal of Local Rate Order (March 15, 1999), Exhibit 3, p.4; *id.* Exhibit 3D, last page, Comcast Cablevision of Detroit Depreciation Schedule 1996; *id.* Exhibit 6, p.3, Letter to Stanton (Detroit Cable Communications Commission) from Booth (Comcast) (Jan. 14, 1999) (“PMRG excluded \$295,988 of converter loss expense. This expense has been included in PMRG’s previous reports. Mr. Ashpaugh requested and received the 12/96 general ledger page that supported this expense.”); City Opposition, Exhibit H, Comcast Cable Communications, General Ledger (showing “Converter Loss”).

²⁹ City Opposition, Exhibit H.

8. We take this opportunity to address one matter in paragraph 18 of the *Bureau Order* on our own motion. In its Appeal, Comcast described its methodology of removing the gross book value of lost converters from the gross book account and including the converter's net book value as depreciation expense in a lost converter sub-account. It stated it simply identifies in a separate sub-account what other operators generally do not remove from their gross book values.³⁰ Comcast's practice is fully consistent with the *First Order on Reconsideration*, which provides: "Lost converters should not require separate consideration in the calculation of equipment rates inasmuch as the depreciation rates may take into account a normal loss, and retirement of such lost items will adjust the net plant balance."³¹ While Comcast recovers its costs through depreciation, as contemplated by the *First Order on Reconsideration*, it is not recovering a rate of return on investment that is no longer used or useful for ratepayers. To the extent paragraph 18 addressed practices of other operators alluded to by Comcast, we are reconsidering that dicta. We express no opinion as to whether the practices of operators not before us in this case are consistent with the *First Order on Reconsideration*.

2. Labor Hours

9. The *Bureau Order* rejected Comcast's arguments that the City should have accepted its computation of labor hours for the hourly service charge. However, because the record failed to show whether Comcast's standard installation and maintenance rates were reviewed in light of the revised computation of hours, the *Bureau Order* found that a remand was required on this point.³² The City argues that remand is unnecessary because the consultant's methodology to compute the hours is the same as Comcast's. Comcast supports the *Bureau Order*.³³ We find no basis for reconsideration on this point. Because standard rates are computed by multiplying the average hours for the activity by the hourly service charge,³⁴ a change in the number of hours used in the rate computation could affect the standard rates. Nothing in the record shows that the City applied its labor hours adjustment to the computation of Comcast's standard rates.

III. CONCLUSION

10. In conclusion, the City has not shown errors in the findings of fact or conclusions of law in the *Bureau Order* that warrant reconsideration, and its petition for reconsideration is denied. On remand, the City is directed to make clear what additional information it needs from Comcast for its rate determination, if any,³⁵ and provide Comcast with a meaningful opportunity to respond to any concerns about Comcast's rates. Comcast is directed to respond in a timely and complete fashion. The rate review

³⁰ Comcast Appeal at 21.

³¹ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 9 FCC Rcd 1164, 1199 ¶ 66 (1993).

³² *Bureau Order* at ¶ 24.

³³ Comcast Opposition at 9 n.38.

³⁴ See FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation (June 1996), pp. 16-18.

³⁵ See *Falcon First Communications, L.P.*, 14 FCC Rcd 7277, 7282-83 ¶ 12 (Cab. Serv. Bur. 1999), *application for review denied*, 15 FCC Rcd 17,059 (2000); *TCI Cablevision of St. Louis, Inc.*, 9 FCC Rcd 2141, 2142 ¶ 8 (Cab. Serv. Bur. 1994).

process should be a cooperative process for the purpose of determining whether a cable operator's regulated rates are set in accordance with the Commission's rules and rate forms.

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by the City of Detroit on January 8, 2001 (File No. CSB-A-0615) IS DENIED.

12. 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
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Cable Services Bureau