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

In the Matter of :	)	
	)	
Jones Communications of Georgia/South Carolina,	)	CSB-A-0594
Inc. d/b/a Jones Communications	)	CSB-A-0596
	)	
Appeals of Local Rate Orders of	)	
Savannah, Georgia and Chatham County, Georgia	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 2, 2004 **Released: August 4, 2004**

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Jones Communications of Georgia/South Carolina, Inc. ("Jones") has filed two separate appeals of local rate orders adopted by the City of Savannah (the "City") on September 8, 1998, and Chatham County (the "County") on September 10, 1998. The City and the County filed oppositions, to which Jones filed replies. In addition, Jones filed emergency stay requests.[1] Because these rate appeals have related issues and involve similar parties, we will consolidate our consideration of these matters in the interest of administrative convenience. The appeals involve Jones' assertion that it should be permitted to treat equipment costs differently than they had been treated in the past. The County and City disagree, alleging that differences between the reporting methodologies followed by Jones and its predecessor, Time Warner, have inflated local converter costs and created a potential "double recovery" of these costs. For the reasons discussed below, we deny the appeals.

II. BACKGROUND

2. Under the Commission's rules, rate orders issued by local franchising authorities may be appealed to the Commission. In ruling on an appeal of a local rate order, the Commission 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.[2] 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 appeal.[3]

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[1] Because we resolve the issues raised in these appeals on the merits, the emergency stay requests are rendered moot.

[2] *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).

[3] *Rate Order* at 5732.

3. An operator proposing an increase in basic service tier ("BST"), equipment, or installation rates bears the burden of demonstrating that the proposed increase conforms with our rules.[4] After reviewing an operator's rate forms and other additional information submitted, the franchising authority may approve the operator's requested rate increase or issue a written decision explaining why the operator's rate is not reasonable.[5] If the franchising authority determines that the operator's proposed rate exceeds the maximum permitted rate as determined by the Commission's rules, it may prescribe a rate different from the proposed rate provided that it explains why the operator's rate is unreasonable and the prescribed rate is reasonable.

4. The rate form at issue is FCC Form 1205. Operators use Form 1205 to update and adjust regulated cable equipment and installation rates after the last annual filing.[6] In adopting rate regulations pursuant to the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act")[7], the Commission determined that operators are required to "unbundle" their charges for equipment and installation costs from their rates for programming services to ensure that their equipment and installation rates reflect actual costs.[8] A cable operator's rates for remote control units, converter boxes, other customer equipment, installation, and additional connections are separate from its rates for BST programming.[9]

III. DISCUSSION

5. **Unbundling Concerns Related to Existence of Prior Operator.** In their local rate orders, the City and County directed that Jones reduce its rates for converter boxes. Jones states that the City and County mistakenly rely on the Georgia Municipal Association ("GMA") reports which accuse Jones of trying to unfairly inflate operating revenue by "double recovering" equipment costs through both equipment lease rates and BST rates.[10] Jones states that the GMA points out that Jones' predecessor, Time Warner, did not identify certain equipment-related costs when it first established unbundled equipment rates and that the City and County question Jones' current converter charges based on comparisons with Time Warner's previous filing.[11] Jones argues that Section 76.923 of the Commission's rules and Form 1205 require cable operators to establish equipment and installation charges based on actual costs and the fact that an operator treats certain costs differently than they were treated in the past does not mean that the costs should be ignored.[12] Jones asserts that the critical question for the reviewing authority is whether the costs being claimed by the operator are legitimate and states that if the costs are legitimate, they are to be included in the current equipment rate calculations, regardless of past calculations.[13] Moreover, Jones argues that a cable operator cannot be denied recovery of actual costs in its current equipment rates solely because the local regulator fears it may have erred in its review of the system's initial Form 1205.[14] Jones states that if local franchising authorities are

[4] 47 C.F.R. § 76.944.

[5] 47 C.F.R. § 76.936; *see Ultracom of Marple Inc.,* 10 FCC Rcd 6640, 6641-42 (CSB 1995).

[6] *See Communications Act* § 623(b)(3), 47 U.S.C. § 543(b)(3).

[7] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[8] *See TCI of Southeast Mississippi,* 13 FCC Rcd 11080 (CSB 1998).

[9] *TCI Cablevision of Nevada, Inc.,* 11 FCC Rcd 14378, 14384 (CSB 1996). *See also* 47 C.F.R. § 76.923(b).

[10] Appeal Petition at 2.

[11] *Id.*

[12] *Id.* at 2.

[13] *Id.* at 3.

[14] *Id.*

continually allowed to revisit the original Form 1200/1205 unbundling, there never will be any finality to any BST rate ruling.[15] Additionally, Jones asserts that GMA's approach is particularly inappropriate in light of the change in local ownership, and Jones should not be responsible for rate decisions made by its predecessor.[16] It emphasizes that the County and City should simply evaluate whether Jones has, in fact, incurred the costs it is claiming.[17]

6. Jones also states that GMA's analysis suggests that the discrepancy between Time Warner's first Form 1205 and Jones' current Form 1205 is the amount of customer service representative ("CSR") and dispatcher time being claimed and that Jones included these types of costs as being equipment-related while the prior owner of the system did not.[18] Jones argues that there should be no question that CSR and dispatcher time related to converter maintenance are includable cost categories in an operator's "equipment basket" computation.[19] To the extent such costs increase over time, Jones states that they cannot be disallowed based solely on the fact that the new amount exceeds the amount that existed at the time of Time Warner's initial unbundling.[20] Jones asserts that the City and County cannot disallow *bona fide* costs.

7. In their opposition, the City and County state that Jones' inconsistent treatment of CSR and dispatcher time would have resulted in a double recovery of costs because Jones is already recovering costs related to CSR and dispatcher time through its rates for programming service.[21] The City and County assert that if Jones wanted to assign these costs to its equipment basket, Jones should have deducted them from its programming service rates.[22]

8. In its reply, Jones asserts that the error in the City and County's approach is illustrated by comparing the rates previously established by Time Warner with the maximum permitted rates ("MPR") set forth in the contested Order, which provides that the new MPR for the first converter is 28% less and for the second converter is 60% less than the rates previously established by Time Warner.[23] Jones argues that under the circumstances, the claim that Jones has improperly inflated its converter rates by employing a different methodology than its predecessor is false and the purported concern with a double recovery does not comport with the facts.[24] Moreover, Jones asserts that the City and County's continued preoccupation with the cable system's initial unbundling is inconsistent with the letter and spirit of benchmark regulation and insisting on a precise match between the initial unbundling and subsequent annual filings is difficult, if not impossible.[25]

9. The 1992 Cable Act requires cable operators to charge rates based on actual costs for installation and subscriber equipment.[26] Regulated equipment includes all of the equipment located in the

[15] *Id.*

[16] *Id.*

[17] *Id.* at 4.

[18] *Id.*

[19] *Id. See* 47 C.F.R. § 76.923(c).

[20] Appeal Petition at 4.

[21] Opposition at 5.

[22] *Id.* at 6.

[23] Reply at 2.

[24] *Id.*

[25] *Id.*

[26] 1992 Cable Act, § 3(b)(3); Communications Act, § 623(b)(3).

subscriber's home, including converter boxes, remote control units, connections for additional television receivers, and other cable wiring used to obtain basic services.[27] Cable operators must unbundle charges for equipment and installations from the BST rate.[28] They must also use a specific methodology for determining the actual cost of each piece of equipment and installation.[29] Under this methodology, the cable operator must establish an equipment basket to which it assigns the direct costs of service installation, additional outlets, and leasing and repairing equipment.[30] The requirement for equipment basket rates separate from rates for the BST follows from the different statutory treatment given basic and equipment basket rates in the Communications Act and continues to be consistent with the development of a competitive market for equipment and installations.[31] Therefore, even if the costs at issue are *bona fide*, they can be claimed in the equipment basket only if they are unbundled from the regulated programming service rates or are new costs incurred since the operator unbundled its equipment costs.[32] If an operator shifts existing costs from the BST to the equipment basket after the initial unbundling but without adjusting the BST rate, the operator may be recovering the cost twice, once through the BST rate and again through the equipment basket.

10. In the cases before us, the City and County disallowed the disputed costs, accusing Jones of unfairly inflating operating revenue by double-recovering equipment costs through both equipment rates and BST rates and stating that costs indicated by Jones' predecessor, Time Warner, differed markedly. The question raised is whether adding these costs now to the Form 1205 calculations would result in a double recovery. It is unclear whether the CSR and dispatcher time that Jones has apparently included in equipment and installation charges was previously included as a programming services charge by Jones' predecessor. In any case, the Commission's rules establish that if an operator shifts costs from the BST to the equipment basket after the initial unbundling but without adjusting the BST rate the operator may be recovering the costs twice, once through the BST and again through the equipment basket. Cable operators are not allowed to restructure equipment costs recovered through regulated BST rates without making an appropriate adjustment. Jones must provide clarification of the treatment of CSR and dispatcher's time to ensure that these elements have been unbundled correctly. Therefore, we are remanding these cases on this issue.

11. **Unbundling Concerns Related to the Hours Spent Repairing and Maintaining Converters.** Jones states that GMA criticizes it for claiming excessive time maintaining and repairing leased converters and for having much higher estimates than most other companies in Georgia.[33] Jones asserts that the local converter pool during the time covered by the instant Form 1205 was relatively old and the Company experienced a relatively high amount of converter malfunction, necessitating higher than average repair and maintenance.[34] In addition, Jones states that cable operators are entitled to recover the actual costs of providing equipment and as long as the costs claimed by a cable operator are legitimate, they must be allowed, notwithstanding how those costs compare to those claimed by other operators.[35] Jones argues that the City and County cannot simply reduce Jones' rate as being

[27] 47 C.F.R. § 76.923(a). *See TCI Cablevision of Nevada, Inc.,* 11 FCC Rcd 14378, 14385 (CSB (1996).

[28] 47 C.F.R. § 76.923(b).

[29] 47 C.F.R. § 76.923(d) – (m).

[30] 47 C.F.R. § 76.923(c).

[31] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation,* First Order on Reconsideration, 9 FCC Rcd 1164, 1192 (1993); *Rate Order,* 8 FCC Rcd at 5810.

[32] *See TCI Cablevision of Nevada, Inc.,* 11 FCC Rcd at 14385.

[33] Appeal Petition at 5.

[34] *Id.*

[35] *Id.*

comparatively too high.[36] Moreover, Jones states that comparing its reported figures for converter repairs with another operator who might not only have different operational practices, but a different reporting methodology,[37] is improper and there is no reasonable basis for disallowing Jones' *bona fide* cost claims.[38]

12. In their opposition, the City and County argue that the time Jones claims to spend repairing and maintaining converters was far in excess of other cable operators' estimates, noting that MediaOne estimated that it spends an average of 4.77 minutes repairing and maintaining each converter, U.S. Cable spends 15.26 minutes, and Jones reportedly spends 90 minutes repairing and maintaining each converter.[39] The City and County state that the Jones, MediaOne and U.S. Cable estimates were calculated using the same method.[40]

13. In reply, Jones points out that the City and County acknowledge that cable operators have broad discretion regarding their reporting methodology, recognize the legitimacy of variations in permissible reporting approaches from "drive" time, supervisory time, CSR and dispatcher time, and note that none of these approaches is necessarily better than others.[41]

14. Neither the Commission's rules, nor Form 1205, specify any particular method for counting labor hours as long as the operator uses the same method for counting hours in calculating the hourly service charge ("HSC") that it uses in setting rates for installations, maintenance, and equipment leases.[42] The Form 1205 instructions require operators only to explain how they derived the figures they report.[43] Using installation services as an example, some operator's may use so-called billable hours, counting only the time an installer is actually at the subscriber's premises performing the installation and another operator may also include the time spent driving to and from the premises, while another operator may take a different approach by counting an installer's total paid time and dividing by the number of installations performed.[44] Some operators may also include supervisory time.[45] None of these approaches is necessarily better than others; they are simply different ways of allocating costs to services.[46] The primary concern in reviewing an operator's calculations should be to ensure that the operator's overall equipment basket costs are fully recovered on a consistent basis, not how the operator delineated its labor hours.[47] Use of any of these methods, or other method selected, consistently should result in proper cost

[36] *Id.* at 6.

[37] Jones states that in some instances, a cable operator may report based solely on "in-house" time, or the operator may report based on "total field" time (including drive time), or in other cases, such as the instant case, the operator may include "support time." *Id.* at 6-7.

[38] *Id.*

[39] Opposition at 3-4.

[40] *Id.*

[41] Reply at 1.

[42] *See Comcast Cablevision of Detroit, Inc.,* 15 FCC Rcd 24022, 24030 (CSB 2000). *See also Falcon Cablevision,* 10 FCC Rcd 9424, 9425 (CSB 1995). *See also TCI of Houston, Inc.,* 11 FCC Rcd 20929, 20935 (CSB 1996).

[43] *See Comcast Cablevision of Detroit, Inc.,* 15 FCC Rcd at 24030.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

recovery. Such consistency by Jones has yet to be determined. Therefore, we find that a remand is warranted on this issue.

15. Accordingly, **IT IS ORDERED** that the Appeals of Jones Communications of Georgia/South Carolina, Inc. from the Rate Orders by the City of Savannah and Chatham County, Georgia **ARE DENIED** to the extent indicated herein and the local rate orders **ARE REMANDED** for further consideration consistent with this Memorandum Opinion and Order.

16. **IT IS FURTHER ORDERED** that requests for Emergency Stay filed by Jones Communications of Georgia/South Carolina, Inc. **ARE DISMISSED.**

17. This action is taken pursuant to authority delegated by § 0.283 of the Commission's rules.[48]

FEDERAL COMMUNICATIONS COMMISSION

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[48] 47 C.F.R. § 0.283.