

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

In the Matter of

C4 MEDIA CABLE SE, L.P.

Petition for Review of Local Rate Order
of the City of Chatsworth, GA

Emergency Petition for Stay of Local
Rate Order of the City of Chatsworth, GA

ORDER

Adopted: May 30, 1995;

Released: June 1, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On January 10, 1995, C4 Media Cable SE, L.P. ("C4"), the franchisee in the above matter, filed an appeal of a local rate order adopted by the City of Chatsworth, Georgia (the "City") on December 6, 1994.¹ On January 25, 1995, the City filed an opposition to C4's appeal urging the Commission to either dismiss C4's appeal as untimely filed, or, in the alternative, to deny C4's appeal and to allow the City's rate order to go into effect unchanged. C4 filed a reply to the City's opposition on February 1, 1995.

2. In its rate order, the City established rates for C4's basic tier service and associated equipment and installations and required C4 to refund overcharges to subscribers for the period of time between September 1, 1993 and May 14, 1994.² In its appeal, C4 raises four issues relating to (a) its refund liability under the local rate order; (b) the City's recalculation of the inflation adjustment factor on its FCC Form 393; (c) the City's rejection of its proposed Hourly Service Charge; and (d) the City's rejection of its cost of service justification. In its opposition, the City responded to each of the issues raised by C4, and also argued that the Commission should dismiss C4's appeal since it was not filed with the Commission within thirty (30) days of the release of the text of the local rate order.³ In its reply, C4 maintains that its appeal was filed within the time period prescribed by the Commission's rules.

¹ On January 10, 1995, C4 also filed an Emergency Petition for Stay of the City's local rate order.

² Under the Cable Television Consumer Protection and Competition Act of 1992, and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service, associated equipment and installations. See Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), 47 U.S.C. § 543(b). The City's local rate order states that C4's refund liability period shall run from September 1, 1993 through the date on which C4 "became subject to the Amended

II. DISCUSSION

3. Under the Commission's rules, any participant in a ratemaking proceeding at the franchising authority level may appeal a franchising authority's rate decision with the Commission within 30 days of the release of the text of that decision.⁴ In the instant case, the parties disagree as to what constitutes the release of the text of the City's local rate order. The City claims that the text of the local rate order was released on December 6, 1994, the date of the public meeting at which the City adopted the local rate order. The City asserts that the local rate order was read aloud at the meeting and that copies of the rate order were made available at this meeting. Thus, it is the City's position that C4 had until January 5, 1995, which is 30 days subsequent to the December 6, 1994 meeting, to file an appeal of the City's local rate order with the Commission. Since C4's appeal was not filed with the Commission until January 10, 1995, the City contends that it should be dismissed as untimely filed.

4. C4 does not specifically deny that copies of the local rate order were made available at the hearing. C4 claims only that the City did not provide it with a copy of the local rate order until December 13, 1994, the date upon which C4 received a copy of the order from the City by certified mail. Accordingly, C4 contends that its appeal was not due until January 12, 1995. Thus, it is C4's position that its appeal, which was filed with the Commission on January 10, 1995, was timely filed.

5. We conclude that C4's appeal of the City's local rate order was due on January 5, 1995. The City states that the text of the City's local rate order was released to the public at the City's December 6, 1994 meeting. Our rules provide that an appeal of such an order must be filed within 30 days after such release.⁵ Although C4 may not have received a copy of the local rate order at that meeting, C4 acknowledges that the rate order was read aloud and adopted at that meeting and does not specifically deny that copies of the order were made available at that time. The City fulfilled its obligations under our rules, which require that franchising authorities provide public notice of any written rate order and release the text of such order to the public.⁶ The fact that C4 did not receive a copy of the local rate order at the time of its release is not determinative as to whether or not the order was released to the public. C4's appeal of the City's local rate order was due at the Commission by January 5, 1995, which was 30 days subsequent to the date on which the text of the rate order was released to the public. As noted in paragraph 1, *supra*, C4's appeal was filed on January 10, 1995.⁷ C4's appeal is therefore dismissed as untimely filed.

Rules." Local rate order at 4. The Commission's amended cable rate rules became effective on May 15, 1994.

³ See 47 C.F.R. §76.944(b).

⁴ 47 C.F.R. § 76.944(b).

⁵ 47 C.F.R. §76.944(b).

⁶ See 47 C.F.R. §76.936(b).

⁷ The Commission permits operators to file a late pleading, including appeals from local rate orders under the 1992 Cable Act, only upon a showing of good cause. See *In the Matter of Meredith/New Heritage Strategic Partners, L.P.*, 9 FCC Rcd 6841 (1994). In the instant case, C4 has not attempted to establish good cause for the late filing of its appeal.

6. In light of the dismissal of its appeal herein, C4's Emergency Petition for Stay, pending the resolution of its appeal, is rendered moot and is, therefore, also dismissed.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that the Appeal filed by C4 Media Cable SE, L.P. is DISMISSED.

8. IT IS FURTHER ORDERED that, in light of the dismissal of its Appeal, the Emergency Petition for Stay filed by C4 Media Cable SE, L.P. is DISMISSED as moot.

9. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. §0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau