

decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering its local rate order.⁵ If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.⁶

DISCUSSION

3. The City's three page rate order requires TCI to reduce rates for equipment and installation and refund any amounts collected since July 14, 1994 that exceed such rates. In denying TCI's proposed rates, the rate order states only that forms submitted by TCI on February 24, 1995 indicate that TCI is charging more than the FCC-permitted rates for certain equipment and installation services. The order then lists actual rates for four installation services along with reduced permitted rates for those services and states that TCI should refund to subscribers any portion of the actual rates collected since July 14, 1995 that exceed the permitted rates.⁷

4. From the appeal, it appears that TCI unbundled its equipment and installation charges on September 1, 1993. On July 14, 1994, TCI submitted an FCC Form 1200 and a companion FCC Form 1205 to the City. TCI notes in the appeal that instructions accompanying Form 1205 provide that a cable operator filing Form 1205 must wait one year from the date on which equipment and installation charges are unbundled before changing such rates. TCI notes, too, that a year had not elapsed between the September 1, 1993 unbundling of its equipment and installation rates and July 14, 1994, the date on which it filed Form 1205 as well as the date specified in the order from which refunds of rates exceeding the permitted rates were ordered. TCI contends that, because one year had not elapsed, the City misapplied governing federal regulations in ordering refunds from July 14, 1994. TCI argues further that, because its fiscal year is concurrent with the calendar year, it was not required to reset its existing equipment rates until after its 1994 fiscal year closed on December 31, 1994.

5. FCC Form 1205 is the official form used to determine the costs of regulated cable equipment and installation.⁸ Form 1205 has two distinct uses. First, Form 1205 is submitted along with a Form 1200 and is used to establish equipment and installation costs in determining initial rates for regulated cable services. These equipment and installation costs are converted to a monthly subscriber cost that is subtracted from figures derived from programming and

No. 92-262, Third Order on Reconsideration, 9 FCC Rcd 4316, 4346 (1994) ("*Third Recon. Order*").

⁵*Id.*

⁶*Id.*

⁷See TCI appeal, Attachment A.

⁸See FCC Form 1205.

equipment revenues in the Form 1200 in order to determine maximum permitted programming service rates. In following the mathematical principles embodied in these calculations, lower equipment basket costs lead to higher programming rates, while higher equipment basket costs lead to lower programming rates.

6. The second use for Form 1205 is to update permitted regulated equipment and installation charges based on equipment basket costs. Higher equipment basket costs on Form 1205 (resulting in lower programming rates on Form 1200) correlate with higher equipment and installation rates. Conversely, lower equipment basket costs on Form 1205 (resulting in higher programming rates on Form 1200) correlate with lower equipment and installation rates. In its appeal, TCI effectively is contending that, even though the data in its attached Form 1205 affects its Form 1200 maximum permitted basic service tier rates, it is not required to make concomitant adjustments to its equipment and installation rates until after it files a new Form 1205 after the close of its next fiscal year. We agree.

7. As we have previously noted, Forms 1200 and 1205 establish a direct linkage between programming service rates and equipment and installation costs and charges. When setting rates or calculating refund liability, a franchising authority should normally adhere to the mathematical principles underlying the benchmark methodology,⁹ thereby assuring that an operator is allowed to earn neither more nor less than its maximum permitted revenues.¹⁰ Therefore, Form 1205 calculations resulting in lower equipment basket costs should normally lead to higher programming service rates and correspondingly lower equipment and installation rates. However, when the Commission initially promulgated FCC Forms 1200 and 1205 it created an exception to this direct linkage. The instructions to Form 1205 state that, if an operator has already unbundled equipment and installation charges at cost, the operator must wait one year from the date on which it unbundled equipment and installation charges before changing these charges.¹¹ The instructions go on to state that an operator does not even need to complete the Worksheet for Calculating Permitted Equipment and Installation Charges or Schedule D, which lists the averages hours by type of installation, if the operator is filing Form 1205 only as part of establishing its initial maximum permitted rates for programming services.¹² These instructions comport with our previous determination that equipment and installation rates can only be

⁹See *In the Matter of TCI Cablevision of Oregon, Inc. (Multnomah County/Portland, OR)*, DA 95-2269, (Cable Serv. Bur., released Nov. 14, 1995), at ¶ 16-19.

¹⁰See *Paragon Cable (Portland, Multnomah County and Linton, Oregon)*, 9 FCC Rcd 4091 (Cab. Serv. Bur. 1994); *Ventura County Cablevision (City of Thousand Oaks, California)*, DA 95-1196 (Cab. Serv. Bur., released June 5, 1995).

¹¹FCC Form 1205 at 2.

¹²*Id.* at 3, 13.

changed annually.¹³ Since TCI restructured its rates on September 1, 1993, we find that TCI could not change its equipment and installation rates before September 1, 1994.¹⁴

8. Accordingly, we find that TCI should not be required to adjust its equipment and installation charges and refund any charges collected since July 14, 1994 that exceed the rates that are listed as permitted rates in the City's rate order. Furthermore, we believe that TCI's postponement of equipment and installation rates changes until the filing of its first fiscal year Form 1205, which would take place more than one year after TCI unbundled its equipment and installation rates, is permissible, because such postponement could serve to limit administrative expenses for the operator and limit confusion for consumers. If we were to require TCI to change these rates when it filed Form 1205 on July 14, 1994, TCI would have had to adjust its rates twice in a relatively short time period. In this case, TCI would have been faced with adjusting rates on July 14, 1994, less than one year from its previous change on September 1, 1993, and then again in early 1995 following its fiscal year filing. We find that TCI reasonably relied on the form instructions and was not required to file its next Form 1205 until after the close of its fiscal year on December 31, 1994. At that time that TCI should have changed its equipment and installation rates if its filing indicated a change in its maximum permitted rates. This issue is therefore remanded to the City for further proceedings consistent with these findings.

ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that TCI of San Jose's appeal of the City of Cupertino's local rate order, regarding refund of equipment and installation charges, **IS GRANTED** and the matter **IS REMANDED** to the City for resolution in accordance with the terms of this Order.

10. 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

¹³See *Public Notice, Cable Television Rate Regulation Questions and Answers*, Question No. 33 (released May 13, 1993).

¹⁴We realize that this finding will enable operators who are charging more for equipment than is justified by their Form 1205 costs, to receive in excess of their maximum permitted revenues for some period of time. However, the Form 1205 instructions and this ruling apply to "changes" in equipment rates and therefore other operators who are charging less than their maximum permitted rates under their initial Form 1205 filing will earn less than their maximum permitted revenues for a similar period of time.