

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

In the Matter of:)
)
TCI CABLEVISION OF CALIFORNIA, INC.)
)
Appeal of Local Rate Order)
of San Mateo County Cable Television Authority (California))
)

MEMORANDUM OPINION AND ORDER

Adopted: September 12, 1996

Released: September 19, 1996

By the Chief, Cable Services Bureau:

INTRODUCTION

1. On June 9, 1995, TCI Cablevision of California, Inc. ("TCI-C"), operator of a cable system serving the communities of Belmont, Brisbane, Dale City, Redwood City, San Carlos, San Mateo City and portions of the County of San Mateo (North Fair Oaks and Broadmoor), California, filed an appeal of a local rate order adopted on May 10, 1995 by the San Mateo County Cable Television Authority ("the Authority"). TCI-C challenges those portions of the Authority's rate order setting permitted rates for equipment and installation services, and asserting authority over its Inside Wiring Maintenance Program and prescribing monthly rates for that service. TCI-C also challenges the portions of the rate order directing that refunds be made of any portion of such rates collected since July 14, 1994 that exceed the permitted rates.¹ The Authority filed a response on June 22, 1995.

2. Under our rules, rate orders made by local franchising authorities may be appealed to the Commission.² In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as there is

¹Under the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and 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)

²See 47 C.F.R. § 76.944.

a reasonable basis for that decision.³ The Commission will reverse a franchising authority's decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering its local rate order.⁴ 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.⁵

DISCUSSION

A. Equipment and Installation Rates

3. In denying TCI-C's proposed rates, the franchising authority relies on recommendations submitted to it by a consultant, who concluded that the FCC Forms 1200, 1205 and 1215 submitted by TCI-C on or about August 15, 1994 indicate that TCI-C is charging more than the FCC-permitted rates for certain equipment and installation services. The Authority's rate order requires TCI-C to reduce its rates for equipment and installation and to refund any amounts collected since July 14, 1994 that exceed the reduced rates.

4. TCI-C states in its appeal that it unbundled its equipment and installation rates on September 1, 1993. TCI-C states that, when it submitted FCC Forms 1200 and 1205 in August of 1994, it was not required to reset those equipment and installation rates that had been unbundled on September 1, 1993, as the Authority's rate order would effectively require it to do. TCI-C notes in the appeal that the 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 those rates. TCI-C 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 specified in the order from which refunds of rates exceeding the permitted rates were ordered. TCI-C contends that, because one year had not elapsed, the Authority misapplied governing federal regulations in ordering refunds from July 14, 1994. TCI-C 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.

³See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5731 (1993) ("*Rate Order*"); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, and Buy-Through Prohibition, MM Docket No. 92-262, Third Order on Reconsideration, 9 FCC Rcd 4316, 4346 (1994) ("*Third Recon. Order*").

⁴*Id.*

⁵*Id.*

5. FCC Form 1205 is the official form used to determine the costs of regulated cable equipment and installation.⁶ 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 per subscriber cost that is subtracted from figures derived from programming and 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-C is contending in effect 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 pointed out,⁷ 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, thereby assuring that an operator is allowed to earn neither more nor less than its maximum permitted revenues.⁸ 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.⁹ The instructions go on to state that an operator need not complete the Worksheet for Calculating Permitted Equipment and Installation Charges or Schedule D, which lists the average

⁶See FCC Form 1205.

⁷See In the Matter of TCI-C Cablevision of Oregon, Inc. (Multnomah County/Portland, OR), 10 FCC Rcd 12547 (Cable Ser. Bur. 1995), at ¶ 16-19.

⁸See Paragon Cable (Portland, Multnomah County and Linton, Oregon), 9 FCC Rcd 4091 (Cab. Serv. Bur., released August 9, 1994); Ventura County Cablevision (Authority of Thousand Oaks, California), DA 95-1196 (Cab. Serv. Bur., released June 5, 1995).

⁹FCC Form 1205 at 2.

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.¹⁰ These instructions comport with our previous determination that equipment and installation rates can only be changed annually.¹¹ Since TCI-C had restructured its rates on September 1, 1993, we find that TCI-C could not change its equipment and installation rates before September 1, 1994.¹²

8. Accordingly, we find that TCI-C should not be required to adjust its equipment and installation charges as specified in the Authority's order, nor to refund any charges collected that exceed the rates listed as permitted rates in the Authority's rate order. Furthermore, we believe that TCI-C's postponement of equipment and installation rates changes until the filing of its first fiscal year Form 1205, which would take place at least one year after TCI-C 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-C to change these rates when it filed Form 1205 on July 14, 1994, TCI-C would have had to adjust its rates twice in a relatively short time period. In this case, TCI-C would have been faced with adjusting its 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-C 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 TCI-C 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 Authority for further proceedings consistent with these findings.

B. Inside Wiring Maintenance Plan

9. TCI-C argues that the Authority exceeded its jurisdiction by prescribing rates for TCI-C's inside wiring maintenance plan.¹³ TCI-C contends that its inside wiring maintenance plan should not be subject to regulation. In support, TCI-C argues that this maintenance plan is

¹⁰*Id.* at 3, 13.

¹¹See *Public Notice*, Cable Television Rate Regulation Questions and Answers, Question No. 33 (released May 13, 1993).

¹²We 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.

¹³The Authority determined that TCI-C's proposed monthly charge for inside cable wiring maintenance contracts was a regulated rate, and determined that the maximum monthly charge for the maintenance plan should be \$0.04 per subscriber. See Authority Rate Order at 2.

analogous to equipment sales by cable operators. Relying on our *First Recon. Order*,¹⁴ TCI-C asserts that the Commission has concluded that such plans are unregulated if the cable operator also offers the equipment for lease under regulated rates.¹⁵ TCI-C claims that the regulated alternative to its unregulated inside wiring maintenance plan is its offer of an as-needed maintenance service plan, the charges for which are based on actual hours multiplied by the hourly service charge ("HSC"). The presence of the regulated maintenance service plan, TCI-C suggests, establishes competition to the inside wiring maintenance plan. TCI-C also asserts broadly that additional competitive sources of inside wiring maintenance are available to all cable customers and argues that, because its contract for maintaining inside cable wiring is "optional" to the subscriber, its service contract should not be subject to regulation.

10. In response, the Authority maintains that it has properly interpreted Commission rules in determining that TCI-C's service contract for maintenance of inside wiring was subject to regulation. The Authority asserts that the inside wiring maintenance plan should be regulated as an offering of a service contract as provided in Section 76.923(i) of the Commission's rules.¹⁶

11. In our decision in *Multnomah County/Portland, OR*,¹⁷ we stated that inside wiring is customer equipment,¹⁸ the regulatory treatment of which depends upon who owns it. We are unable to rule on the issue presented in this appeal since the facts in the record below concerning who owns the inside wiring in question are unclear. Accordingly, we remand this issue to the Authority for a determination of the ownership of the inside wiring at issue.¹⁹ In the event the Authority should determine that TCI-C installed the inside wiring and retains ownership of that wiring, consistent with our rules the Authority should require that the rate for the lease of that

¹⁴Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking in MM Docket No. 92-266, 9 FCC Rcd 1164, 1192 (1993) ("*First Recon. Order*").

¹⁵TCI-C notes in its Appeal that we have previously stated that "equipment sales by an operator will be unregulated where the operator offers subscribers the same equipment under regulated leased rates." Appeal at 6 (quoting from the *First Recon. Order*).

¹⁶See 47 C.F.R. § 76.923(i).

¹⁷See In the Matter of TCI-C Cablevision of Oregon, Inc. (Multnomah County/Portland, OR), DA 95-2269, (Cable Ser. Bur., released November 14, 1995), 1995 WL 683989, at ¶ 21-23.

¹⁸See 47 C.F.R. § 76.923.

¹⁹We note in this connection that an operator is not likely to be the owner of a subscriber's inside wiring if it did not install the wiring in the subscriber's premises. In addition, an operator is not the owner if the operator installed the wiring but transferred ownership of the wiring to the subscriber.

wiring be justified.²⁰ The rate for operator-owned wiring includes a component for maintenance costs.²¹ Under such circumstances, TCI-C's subscribers cannot also be charged a separate wiring maintenance fee.²² On the other hand, if the Authority should determine that TCI-C's subscribers own the inside wiring, no lease rate would apply. In that event, the Authority must allow TCI-C to recover the costs of providing any maintenance and repair of that wiring through a service contract.²³ Our rules provide that charges for such service contracts must be based on the operator's HSC²⁴ multiplied by either the estimated average number or the actual number of hours for maintenance and repair. The Authority is directed on remand to make findings and rulings consistent with our regulations as discussed above.

ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that TCI Cablevision of California, Inc.'s appeal of the San Mateo County Cable Television Authority's local rate order **IS GRANTED** to the extent indicated herein, and the matter **IS REMANDED** to the Authority for resolution in accordance with the terms of this Order.

13. 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

²⁰Under our rules, subscriber charges for inside wiring shall not exceed actual costs. See 47 C.F.R. § 76.923(a). Section 76.923(a) of our rules identifies equipment subject to price regulation as including but not limited to "other cable home wiring."

²¹*First Recon. Order*, 9 FCC Rcd at 1200.

²²See 47 C.F.R. § 76.923(a)(4).

²³See 47 C.F.R. § 76.923(i).

²⁴We note that the operator's HSC should include the cost of repair of inside cable wiring.