

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

In the Matter of )  
 )  
TCI Cablevision of Nevada, Inc. )  
 )  
Appeal of Local Rate Order )  
of Washoe County, NV; )  
 )  
Appeal of Local Rate Order )  
of the City of Sparks, NV; )  
 )  
Appeal of Local Rate Order )  
of the City of Reno, NV; )  
 )  
Appeal of Local Rate Order )  
of Carson City, NV. )

**CONSOLIDATED ORDER**

**Adopted: October 23, 1996**

**Released: October 30, 1996**

By the Chief, Cable Services Bureau:

**INTRODUCTION**

1. By this order, the Commission consolidates and resolves four separate appeals of local cable rate orders filed by TCI Cablevision of Nevada, Inc. ("TCI"). The first appeal involves the local rate order of Washoe County, Nevada, adopted on August 31, 1995.<sup>1</sup> The second appeal the involves the local rate order of the City of Reno, Nevada, adopted on July 17, 1995. The third appeal involves the local rate order of Carson City, Nevada adopted on July 6, 1995, and the fourth appeal involves the local rate order adopted by the City of Sparks, Nevada on June 26, 1995. In each of these cases the franchising authority rejected TCI's inclusion of "capitalized direct overhead" costs of \$20 per converter on its FCC Form 1205. In addition, each local rate order requires TCI to implement certain rate reductions consistent with this disallowance, and issue refunds to subscribers.<sup>2</sup> Because the issues and arguments in each appeal are identical, the Bureau has determined that the joint resolution of these appeals in a

---

<sup>1</sup>TCI Cablevision of California is also named as a party in the appeal of the rate order of Washoe County, Nevada.

<sup>2</sup>Each of the rate orders at issue incorporates the findings and recommendations of the Buske Group, an independent consulting firm.

single consolidated order will not prejudice any of the parties and will serve the interests of administrative efficiency.<sup>3</sup> For the reasons set forth below, we deny TCI's appeals.<sup>4</sup>

2. In the rate orders, the Cities found that TCI incorrectly included certain costs described by the operator as overhead expenses for converter units. To calculate the equipment related costs of \$20 per converter, TCI added: \$7 per converter for the labor costs of installation, \$7 per converter for the labor costs of retrieving a unit from a customer's home, \$3 per converter for inventory management costs, and \$3 per converter for material costs, including cable jumpers, fittings and splitters.<sup>5</sup> This appeal concerns TCI's inclusion of these costs in its FCC Form 1205.

3. Under our rules, rate orders made by local franchising authorities may be appealed to the Commission.<sup>6</sup> 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 a reasonable basis for this decision.<sup>7</sup> Therefore, 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.

## DISCUSSION

4. Form 1205 is the official form used by regulators to determine whether an operator's regulated rates for equipment and installations are reasonable under the revised benchmark rules which apply to operators beginning May 15, 1994.<sup>8</sup> Pursuant to the 1992 Cable Act, the Commission has established standards for setting, on the basis of actual cost, the

---

<sup>3</sup>The local franchising authorities are hereafter referred to as "the Cities." Washoe County, the City of Reno, and the City of Sparks, each filed identical oppositions ("Cities' Oppositions") to TCI's identical appeals ("TCI Appeals") of the local rate orders. In addition to the arguments in the TCI appeals, the appeal of the Carson City rate order contains one additional argument, *see* paragraph 17 *infra*, and because of pagination differences the pleadings will be referred to separately as "Carson City Appeal" and "Carson City Opposition."

<sup>4</sup>Concurrent with its appeal of the City of Sparks' rate order, TCI filed a request for emergency stay. This request is dismissed as moot in light of the resolution of the appeal on the merits.

<sup>5</sup>*See* TCI Appeals at 6; Carson City Appeal at 7.

<sup>6</sup>*See* 47 C.F.R. § 76.944.

<sup>7</sup>*See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Report and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266, 8 FCC Rcd 5631 (1993) ("*Rate Order*"); Third Order on Reconsideration in MM 92-266, 9 FCC Rcd 4316 (1994) ("*Third Recon. Order*").

<sup>8</sup>*See* Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rule Making in MM Docket 92-266, 9 FCC Rcd 4119 (1994) ("*Second Recon. Order*").

rates for installation and lease of equipment used by subscribers to receive the basic service tier. Equipment rates are derived from total capital and maintenance costs per unit of equipment. Installation rates are derived from a calculation of an hourly service charge and an application of that charge to different types of installations.<sup>10</sup> The maximum permitted rates for installation and lease of equipment calculated pursuant to these Commission regulations as determined on Form 1205 are deemed to be reasonable, and are, therefore, lawful under the 1992 Cable Act.<sup>11</sup> Under Commission rules, cable operators have the burden of proof in demonstrating the reasonableness of existing or proposed rates for their basic service tier and associated equipment.<sup>12</sup>

5. The Cities disallowed TCI's capitalization of converter costs in TCI's Form 1205 stating that the proposed rates would be tantamount to a double recovery of these costs, first in the monthly programming rates and again in the converter charges themselves.<sup>13</sup> In addition to this "double recovery" concern, the costs were disallowed because: (1) the costs are inconsistent with the Commission's definition of "annual purchase costs;" (2) the proposed capital costs for converters are not based on a local system; (3) capitalization of the costs is inconsistent with generally accepted accounting principles ("GAAP"); (4) TCI has not substantiated that the material costs it seeks to capitalize are not already in the converter lease charge as an hourly service charge; and (5) labor or other operating costs associated with converter disconnects and converter inventory management are already incorporated in programming service rates.<sup>14</sup> The Cities excluded the \$20 per unit capital cost from Form 1205, thereby reducing TCI's lease rates to the Cities' maximum permitted converter rates in the case of all Cities except Carson City, from \$1.12 to \$0.75 per month for "converter 1" and from \$2.00 to \$1.63 per month for "converter 2," and in the case of Carson City, from .98 per month to .61 for "converter 1" and from \$1.52 per month to \$1.09 for "converter 2."<sup>15</sup>

6. In support of its appeals, TCI argues that (1) the contested costs are incidental costs allowed under existing benchmark rules; (2) rigid adherence to generally accepted accounting principles is not required; (3) TCI's use of nation-wide system information rather than local system information does not justify rejecting the \$20 figure in its entirety; and (4) there

---

<sup>9</sup>See Communications Act of 1934, § 543(b).

<sup>10</sup>The hourly service charge, or HSC, is used as a factor in developing charges for installation and monthly leases of individual pieces of equipment. See FCC Form 1205 at 14.

<sup>11</sup>See Communications Act of 1934, § 623(b), 47 U.S.C. § 543(b).

<sup>12</sup>See 47 C.F.R. § 76.937(a).

<sup>13</sup>See TCI Appeals, Exh. 1, at 2; Carson City Appeal, Exh. 1, at 2.

<sup>14</sup>*Id.*

<sup>15</sup>See TCI Appeals, Attachment A; Carson City Appeal at Attachment A.

was no double recovery.<sup>16</sup> In addition to disputing the reasons offered by the Cities for disallowing the \$20 of capital costs per converter, TCI also presents four affirmative reasons for including these costs in Form 1205.<sup>17</sup> First, TCI argues that its material costs for converters should be capitalized because these costs have always been reflected in its capital accounts. TCI maintains that it recently reassigned "certain direct, in-home converter-related costs," i.e., the material costs at issue, to a converter capital account so they will now be recovered through its converter rental charges. Second, TCI claims that the actual cost of installing and retrieving converters and managing converter inventory cannot be recouped through one-time charges. Third, TCI states that the contested figure for inventory control costs includes a panoply of expenses that are directly linked to the deployment of converters that have not been tallied elsewhere in the equipment basket calculation. Finally, TCI claims that the converter installation costs cover those costs not covered by existing installation charges.<sup>18</sup>

#### A. ANNUAL PURCHASE COSTS

7. In asserting the converter costs at issue are "annual purchase costs" as defined by the Commission, TCI argues that annual purchase costs include certain incidental costs, under which its costs should be allowed. TCI acknowledges that none of these costs are among those listed in the rule, but argues incidental costs not included in these examples should not be discarded.<sup>19</sup> In opposing TCI's appeal, the Cities argue that Commission rules allow only for capitalization of costs that are incidental to annual purchase costs. Citing 47 C.F.R. § 76.923(f), the Cities claim that the costs TCI capitalized are not among those costs that the Commission defines as incidental to converter purchase costs, but are operating costs.<sup>20</sup>

8. The Commission rule defining the "equipment basket" states that the basket shall include all "direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment."<sup>21</sup> Pursuant to the 1992 Cable Act, material and labor costs included in the equipment basket must be recoverable by the operator.<sup>22</sup> The costs of installing

---

<sup>16</sup>See TCI Appeals at 3-6; Carson City Appeal at 4-7.

<sup>17</sup>See TCI Appeals at 7-8; Carson City Appeal at 7-9.

<sup>18</sup>*Id.*

<sup>19</sup>See 47 C.F.R. § 76.923(f).

<sup>20</sup>See Cities' Oppositions at 3; Carson City Opposition at 6.

<sup>21</sup>See 47 C.F.R. § 76.923.

<sup>22</sup>See Communications Act, § 623(b), 47 U.S.C. § 543(b). Section 623(b)(3) of the Communications Act requires that rates for equipment and installation reflect their actual costs. See also First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking in MM Docket 92-266, 9 FCC Rcd 1164, 1190-1201 (1993) ("*First Recon. Order*").

and retrieving converters, the costs of managing the converter inventory, and the material costs of converters are clearly related to providing and installing equipment, and are properly classified as part of the equipment basket. Thus, upon proper application of the rules, TCI must be permitted to recover the labor costs of installing and retrieving converters, the costs of managing converter inventory, and the material costs of converters.

9. Although TCI states that the costs are incidental to annual purchase costs for converters, TCI does not adequately justify its reasons for treating the labor costs of installing and retrieving converters, the costs of managing converter inventory, and the material costs of converters as capital costs as it provides on its Form 1205.<sup>23</sup> Pursuant to Commission rules, annual purchase costs include "acquisition price and incidental costs such as sales tax, financing, and storage up to the time [the converter] is provided to the customer."<sup>24</sup> While the list of incidental costs in § 76.923(f) is not exhaustive, the costs at issue, i.e., labor costs of installation and retrieval, inventory management costs, and material costs for converters, are more substantive in nature than those mentioned as incidental costs. Rules governing the recovery of equipment and installation costs do not provide for the capitalization of the cost of retrieval, re-installation, and re-inventorying of converters. Installation costs are to be recovered as separate installation charges, and therefore such costs may not also be capitalized. In addition, our rules define incidental costs as costs incurred up to the time the converter is provided to the customer, and the converter installation and retrieval costs that TCI seeks to capitalize would be incurred after the converter is provided to the customer. Indeed, TCI does not distinguish clearly the converter costs at issue from the operating expenses and labor costs that are ordinarily included in Form 1205. TCI has failed to respond to the Cities' assertion that TCI incorrectly recorded these operating costs as equipment costs on the Form. TCI's appeal with respect to this issue is denied.

## B. VARIANCE FROM GAAP

10. TCI also contests the Cities' rejection of its capitalized costs because Form 1205 was not maintained in accordance with GAAP.<sup>25</sup> TCI cites 47 C.F.R. § 32.1 which states that the Commission's accounting rules are based on GAAP only "to the extent regulatory considerations permit." According to TCI, the issue is not whether an operator had adhered to GAAP, but whether the operator's accounting treatment meets the regulatory objective of establishing actual costs for providing converters to cable customers.<sup>26</sup> However, in support of its costs, TCI merely states that the \$20 capital costs are "very real costs" that must be recovered

---

<sup>23</sup>See TCI Appeals at 3; Carson City Appeal at 4.

<sup>24</sup>See 47 C.F.R. § 76.923(f).

<sup>25</sup>See TCI Appeals at 3; Carson City Appeal at 4.

<sup>26</sup>See TCI Appeals at 4; Carson City Appeal at 5.

through a separate converter charge, without offering any other basis for the costs.<sup>27</sup> The Cities note that TCI admitted it did not comply with GAAP, and argue TCI has not adequately justified this departure, particularly since the instructions for Form 1205 expressly direct operators to complete the Form "using financial data . . . maintained in accordance with generally accepted accounting principles."<sup>28</sup>

11. The instructions to Form 1205 are an integral part of the Commission's guidelines. These instructions require operators to adhere to GAAP when completing Form 1205 "to the extent that regulatory considerations permit."<sup>29</sup> If regulatory considerations compel a departure from GAAP, the operator should provide reasons for any such deviations. TCI's statement that its costs are "very real" is not an adequate explanation of why its accounting treatment of certain converter costs must deviate from GAAP. Consequently, TCI's appeal of this issue is denied.

### C. USE OF NATIONAL FIGURES TO CALCULATE COSTS

12. TCI challenges the Cities' assertions that its \$20 in capital costs per converter should be rejected because the \$20 figure was not based on system-level information.<sup>30</sup> TCI admits that the \$20 figure is based on national, rather than system-specific information, but states that this does not justify rejecting the figure in its entirety. Because TCI's existing books do not comply with regulatory demands placed on the books, TCI claims it made more sense to use a conservative figure based on a national cost survey rather than try to develop system-specific figures.<sup>31</sup> In arriving at the \$20 figure, TCI provided only a dollar breakdown into four cost components: material costs, installation costs, retrieval costs, and inventory control costs. The Cities respond that TCI failed to provide any description of how these costs were determined or what supporting data was used to establish the reasonableness of the costs.<sup>32</sup>

13. We find that TCI has not provided any support for its \$20 figure for converter capital costs, aside from its assertion that the figure is based on a national cost survey. Therefore, TCI has failed to meet its burden of proving the reasonableness of its rates.<sup>33</sup> As the Cities note, TCI failed to submit any data or methodology supporting the national figures, such as how a

---

<sup>27</sup>*Id.*

<sup>28</sup>See Cities' Oppositions at 4; Carson City Opposition at 8.

<sup>29</sup>See 47 C.F.R. § 32.1.

<sup>30</sup>See TCI Appeals at 5; Carson City Appeal at 7.

<sup>31</sup>See TCI Appeals at 5; Carson City Appeal at 6.

<sup>32</sup>See Cities' Oppositions at 5; Carson City Opposition at 9.

<sup>33</sup>See 47 C.F.R. § 76.937(a).

representative sample was selected and the size of this sample.<sup>34</sup> In addition, the instructions to Form 1205 require that the data be identified at the level of organization at which records are kept, e.g., system-wide.<sup>35</sup> TCI keeps its records on a system level, so its capital costs per converter figure must be identified at the system level as well. Accordingly, because TCI failed to establish the credibility of the reported data, the Cities acted reasonably in rejecting the \$20 figure.

#### D. DOUBLE RECOVERY

14. The Cities claim that by introducing the costs on the Form 1205 at issue, without having included these costs on its previous Form 1205, TCI is seeking to add charges without any corresponding "unbundling" reduction in its maximum permitted monthly programming costs.<sup>36</sup> Consequently, the Cities assert that TCI already recovers labor costs of installing and retrieving converters, costs of managing converter inventory and material costs for converters through direct installation charges and programming service rates. The Cities state that TCI's \$20 per converter charge is attributable solely to an artificial change in TCI's accounting policy allowing TCI to double recover costs. On appeal, TCI maintains that the updated filing of Form 1205 is not linked with its previous Form 1205 filing, but represents a separate and distinct rate proceeding. Furthermore, according to TCI, although the Cities state that some of the contested costs may have been recovered elsewhere in the equipment basket, the Cities fail to identify exactly where these costs have already been included.<sup>37</sup> Moreover, TCI argues that its own failure in the past to seek recovery for these actual costs should not prevent the operator from recovering them now through its present filing.<sup>38</sup> We agree with TCI that it should be allowed to recover *bona fide* equipment costs; however, we find that the issue here is not whether these costs are *bona fide*, but whether these costs were claimed when TCI established its initial rates for monthly programming services.

15. The 1992 Cable Act requires cable operators to charge rates based on actual costs for installation and subscriber equipment.<sup>39</sup> Regulated equipment includes all of the equipment located in the subscriber's home, including converter boxes, remote control units, connections for

---

<sup>34</sup>See Cities Opposition at 5; Carson City Opposition at 10.

<sup>35</sup>See FCC Form 1205 at 4.

<sup>36</sup>Under FCC Rules, the actual cost of regulated equipment and installation plus a reasonable profit must be separated or "unbundled" from an operators's maximum permitted rates for regulated cable services. See FCC Form 1205 at 1.

<sup>37</sup>See TCI Appeals at 5; Carson City Appeal at 5.

<sup>38</sup>*Id.* at 6.

<sup>39</sup>1992 Cable Act, § 3(b)(3); Communications Act, § 623(b)(3).

additional television receivers, and other cable wiring used to obtain basic services.<sup>40</sup> Cable operators must unbundle charges for equipment, installation, and additional outlets from the basic service tier rate.<sup>41</sup> They must also use a specific methodology for determining the actual cost of each piece of equipment and installation.<sup>42</sup> 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.<sup>43</sup> In the equipment basket, the cable operator must allocate the system's joint and common costs including installation, leasing, and equipment repair (but not general system overhead) plus a reasonable profit.<sup>44</sup> FCC Form 1205 is used to determine the costs associated with equipment and installation for the basic service tier, and has two distinct uses. First, Form 1205 is submitted along with Form 1200 to establish equipment and installation costs in determining initial rates for regulated cable services. The second use for Form 1205 is to update permitted regulated equipment and installation charges based on equipment basket costs.

16. In filing the Form 1205 at issue, TCI has not established that the costs at issue are new "direct overhead" costs, *i.e.* from a change in TCI's operations or TCI's investment in new equipment. Instead, TCI asserts that these costs result from a change in its accounting to conform to regulatory demands.<sup>45</sup> A result of changes in TCI's policy for cost classification, however, is not a sufficient justification to include the costs on Form 1205. Because TCI did not include these costs in its previous Form 1205 used for the Form 1200 unbundling, including the costs now would result in a double recovery of the costs, once in the monthly programming service rates and again in the converter charges themselves. Allowing these costs permits an operator to identify "overhead" costs for the equipment basket it had not unbundled when the initial rates for monthly programming services were established. Consequently, the Cities were correct in disallowing costs solely attributable to TCI's change in accounting methods or to a change in its policy of classifying costs for Form 1205 purposes. Accordingly, TCI's appeal regarding this issue is denied.

---

<sup>40</sup>47 C.F.R. § 76.923(a).

<sup>41</sup>47 C.F.R. § 76.923(b).

<sup>42</sup>47 C.F.R. § 76.923(d)-(m).

<sup>43</sup>47 C.F.R. § 76.923(c).

<sup>44</sup>*Id.*

<sup>45</sup>See TCI Appeals at 2; Carson City Appeal at 2.



**E. TOLLING ORDERS**

17. Finally, we note that the Carson City appeal raises the additional argument that in failing to issue a tolling order within 30 days of TCI's filing, Carson City cannot review or act on the filing. Carson City responds that TCI is incorrect with respect to its ability to order a prospective rate judgment, but recognizes that a tolling order is necessary if it were to delay the proposed rates from going into effect or assess a refund liability. We agree with Carson City that the regulations require an accounting order before the close of its review period; however, the franchising authority still has the right to prescribe rates and order a prospective rate reduction. Although TCI is not liable for any refunds with regard to its rates set before the City's July 6, 1995 order, it has no impact on the City's authority to order prospective refunds to bring TCI's rates in compliance with the City's July 6, 1995 order. We deny TCI's appeal of this issue.

**ORDERING CLAUSES**

18. Accordingly, it is **ORDERED** that the appeal by TCI Cablevision of Nevada Inc. and TCI Cablevision of California, of the local rate order of Washoe County, Nevada with respect to the proposed converter rates **IS DENIED**.

19. It is **FURTHER ORDERED**, that the appeal by TCI Cablevision of Nevada of the local rate order of the City of Sparks, Nevada with respect to the proposed converter rates is **DENIED**.

20. It is **FURTHER ORDERED**, that the appeal by TCI Cablevision of Nevada of the local rate order of the City of Reno, Nevada with respect to the proposed converter rates is **DENIED**.

21. It is **FURTHER ORDERED**, that the appeal by TCI Cablevision of Nevada of the local rate order of Carson City, Nevada with respect to the proposed converter rates and Carson City's authority to review TCI's filing is **DENIED**.

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

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones  
Chief, Cable Services Bureau.