

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
) **DA 95-1125**
NOVATO CABLE COMPANY d/b/a)
CHAMBERS CABLE OF NOVATO)
)
Appeal of Local Rate)
Order based on FCC)
Form 1200 of City of)
Novato, California)

ORDER

Adopted: May 18, 1995

Released: May 22, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On March 16, 1995, Novato Cable Company d/b/a Chambers Cable of Novato ("Chambers"), the franchisee in the above matter, filed an Appeal of Local Rate Order. The rate order was adopted on February 15, 1995 by Chambers' local franchising authority, the City of Novato, California ("the City").¹ The City opposes Chambers' appeal.²

2. In its rate order, the City requires Chambers to establish a new rate schedule for its basic service tier and associated equipment and installations and to issue refunds to subscribers for all payments made in excess of the rates set forth in the local order, dating back to May 15, 1994. Specifically, the City disallowed all of Chambers' installation rates, effectively setting those rates at zero for the period under review. Chambers argues that because of this misapplication of the Commission's rate regulations, the City has improperly reduced Chambers' regulated revenues by setting its rates for installations below the levels permitted under the benchmark regime and has imposed a refund liability that is greater than the level allowed under our rules. The City counters that it set Chambers' installation rates

¹ Under 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. *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) (1992).

² The City filed its opposition on March 31, 1995, to which Chambers filed a reply on April 12, 1995.

at zero because Chambers was uncooperative during the City's rate regulation process. We have addressed this issue in an appeal by Chambers of an earlier basic rate order adopted by the City, regarding Chambers' FCC Form 393.³ While this proceeding involves FCC Form 1200, we reach the same result here as we reached in *Chambers I*.

II. DISCUSSION

3. Under our rules, rate orders made by local franchising authorities may be appealed to the Commission.⁴ 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 that decision.⁵ 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.⁶ 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.⁷

A. FCC Form 1200

4. FCC Form 1200 is the official form used to determine whether regulated rates for programming, equipment and installations are reasonable under the revised benchmark rules which apply to operators beginning May 15, 1994 or upon the expiration of the deferral

³ See Novato Cable Company d/b/a Chambers Cable of Novato (Novato, Calif.), DA 95-629 (Cab. Serv. Bur., released March 28, 1995) ("*Chambers I*").

⁴ See 47 C.F.R. § 76.944 (1993).

⁵ See 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*").

⁶ *Id.*

⁷ *Id.*

period provided under our rules for operators to comply with the revisions to our rules.⁸ Through the use of Form 1200, an operator calculates three sets of figures: (1) the operator's actual March 31, 1994 rate level; (2) the operator's March 31, 1994 benchmark rate level; and (3) the operator's "full reduction" rate level. These figures are used to derive an operator's maximum permitted rates.

5. The operator first completes Module A of the Form 1200 to calculate its March 31, 1994 per subscriber monthly regulated revenue. Next, the operator completes Module B to calculate changes in external costs which the operator is entitled to reflect in its rates but have not yet been passed through to its subscribers. In Module C the operator enters its data with respect to a number of variables to calculate its March 31, 1994 benchmark rate level on a per subscriber, per month basis. The operator's March 31, 1994 actual rate level (Module A plus external costs calculated in Module B) is then compared to the benchmark rate level derived in Module C, with the operator carrying forward the smaller of the two. If the March 31, 1994 actual rate level is smaller, the operator completes Module D, subtracting the monthly per subscriber equipment cost calculated in Form 1205 and adding external costs calculated from Module B. If the benchmark rate level is smaller, the operator completes Module E, subtracting the monthly per subscriber equipment cost taken from Form 1205. Depending on which is used, either Module D or E establishes per-tier rates, which the operator carries forward into Module F, as its so-called provisional rates.⁹

6. In the second part of Form 1200, the operator derives its full reduction rate based on its September 30, 1992 rates. To compute this rate, in Module G, the operator calculates its September 30, 1992 total monthly regulated revenues per subscriber, reduces that amount by 17%, and adjusts upward by 3% to reflect the inflation from September 30, 1992 until September 30, 1993. In Module H, the operator then adjusts the results from Module G for changes since September 30, 1992 with respect to subscribers, regulated channels, and satellite channels. In Module I, the operator subtracts a monthly per subscriber equipment cost from Form 1205, establishes per-tier rates, and adjusts for changes in external costs. In Module J, the operator compares its aggregate provisional rate with its aggregate full reduction rate. The maximum permitted rates an operator is actually allowed to charge are either the provisional rates (Module F) or the full reduction rates

⁸ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Second Order on Reconsideration, Fourth Report and Order, Fifth Notice of Proposed Rulemaking in MM Docket 92-266, 9 FCC Rcd 4119 (1994) ("*Second Recon. Order*").

⁹ A small operator, i.e., an operator with 15,000 or fewer subscribers that is not affiliated with a larger operator, may keep its regulated revenue at its March 31, 1994 levels, and so is not required to complete its benchmark in Module C. Its provisional rates are determined by completion of Module D.

(Module I), depending on whether the aggregate provisional rate is greater or less than the aggregate full reduction rate, and are entered into Module K. In addition to Form 1200, an operator may file Form 1210, up to quarterly, to claim changes in external costs and inflation that justify rate increases.

B. Installation Rates/Refunds

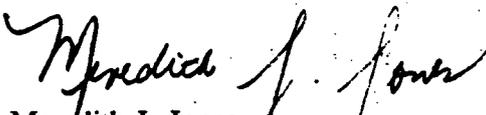
7. Chambers contends that the City's action in setting of its installation rates at zero clearly violates the Commission's rate regulations because it has no basis under the Commission's rules. The City counters that it was forced to set the rates at zero because Chambers failed to provide the City with the rates charged during the period under review. In *Chambers I*, although we noted that a franchising authority could properly set rates for a nonresponsive operator based on the best information available, such as financial data from neighboring cable operators or industry averages, we held that setting Chambers' installation rates at zero was not in accordance with our rules and was therefore unreasonable.¹⁰ The City's decision to accord Chambers' installation rates the same treatment on Chambers' Form 1200 was equally unreasonable. Likewise, Chambers' refusal to provide the City with the installation rates it charged during the Form 1200 refund liability period was also not in accordance with our rules. This issue is therefore remanded to the City with instructions that Chambers provide the City, within ten (10) days of the release of this order, with the installation rates charged during the Form 1200 refund liability period, so that the City may calculate Chambers' refund liability, if any. If Chambers fails to provide the information, the City should set rates based on the best information available.

III. Ordering Clause

8. Accordingly, **IT IS ORDERED** that Novato Cable Company d/b/a Chambers Cable of Novato's appeal of the FCC Form 1200 based local rate order of the City of Novato, California, regarding its installation rates, **IS REMANDED** to the local franchising authority for further proceedings consistent with this opinion and our decision in *Chambers I*.

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

¹⁰ *Chambers I* at ¶¶ 7-8.