

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

DA 95-1126

In the Matter of:)
)
InterMedia Partners on Behalf of)
Robin Media Group, Inc.)
)
Petition for Stay of Local Rate Order)
of the City of Murfreesboro, Tennessee)

ORDER

Adopted: May 18, 1995

Released: May 22, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On March 27, 1995, InterMedia Partners on behalf of Robin Media Group, Inc. ("InterMedia") requested a stay of the Rate Order of the City of Murfreesboro, Tennessee ("City") pending resolution of InterMedia's Appeal. The local rate order was issued by the City on February 13, 1995. InterMedia filed a Petition for Review of the City's local rate order on March 15, 1995.

2. The City's rate order address the rates InterMedia charged for basic cable service, associated equipment and installations. The rate order also provides for a refund retroactive to December 1, 1993. In the City's rate proceedings, InterMedia elected to use the cost of service approach in order to justify its rates.¹

3. The City conducted a cost of service review of Intermedia's Form 1220 and issued an order in which it disallowed the inclusion of InterMedia's intangible assets, and ordered InterMedia to reduce its rates and refund to subscribers the overcharges levied since December 1, 1993. InterMedia states that the City's local rate order would require InterMedia to refund \$925,371 for the period of time dating back to December 1, 1993.

¹ Under the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") and the Commission's implementation 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); Communication Act, § 623(b), 47 U.S.C. § 543(b).

InterMedia seeks a stay of the local rate order pending the resolution of its appeal on the merits. The City does not oppose Intermedia's stay request.²

II. Standard of Review

4. The Commission evaluates petitions for stays under well-settled principles. To support a stay, a petitioner must demonstrate: (1) that it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors the granting of a stay.³ As discussed below, resolution of this stay petition centers primarily on the strength of InterMedia's argument regarding the third prong of this test

III. Discussion

5. The Commission's rules permit operators to implement refunds in either of the following methods: (1) by returning overcharges directly to those subscribers who actually paid the overcharges; or (2) by means of a prospective percentage reduction in the rates for the basic service tier or associated equipment for current subscribers via a specifically identified, one-time credit.⁴ Thus, the Commission's rules are structured so that individuals who were actually overcharged might not receive refunds in the future. Thus, a delay in the implementation if the refunds owed by InterMedia will not harm any interested party, since if InterMedia must implement refunds, it can choose to do so by way of credits to the then-current class of subscribers.

6. A stay of the local rate order would ensure that InterMedia is not subjected to the irreparable economic harm it could face if it had to issue refunds it may not later recoup. Accordingly, in the circumstances here, and since the City does not oppose InterMedia's Petition for Stay, we will grant InterMedia's request that the City's local rate order be stayed pending our review of this case on the merits. During the period of this stay, InterMedia must deposit in an interest-bearing escrow account the total amount of money that the City has ordered InterMedia to refund to its customers. Alternatively, InterMedia may elect to post a bond for the benefit of the City. The amount of the bond shall be the total amount of money that the City has ordered InterMedia to refund to its customers, plus interest on that amount for a twelve (12) month period from the date of this Order. The bond shall provide that if InterMedia is unable to fulfill its refund obligations for any reason, then the surety

² See letter of April 17, 1995 on behalf of Intermedia, attached to which is an Order of the Murfreesboro Cable Television Commission dated April 17, 1995, in which it is stated that "the Stay was not resisted by the City".

³ See *Wisconsin Gas Co. v. FERC*, 758 F. 2d 669, 673-74 (D.C. Cir. 1985) (per curiam); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

⁴ 47 C.F.R. §76.942(d)

will fulfill that obligation to the City, on behalf of InterMedia's subscribers.

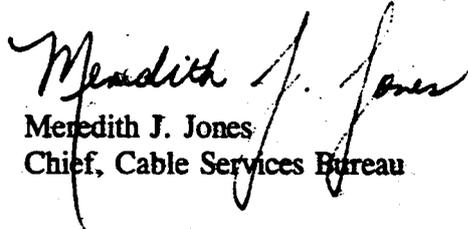
IV. Ordering Clauses

7. Accordingly, **IT IS ORDERED** that the Petition for Stay filed by InterMedia is **GRANTED** pending the resolution of InterMedia's appeal on the merits.

8. **IT IS FURTHER ORDERED** that the total amount of money that the City has ordered InterMedia to refund to its customers **SHALL BE PLACED** by InterMedia in an interest-bearing escrow account, **OR SHALL BE SECURED** by the posting of a bond for the benefit of the City for the total amount of money that the City has ordered InterMedia to refund to its customers, plus interest on that amount for a twelve (12) month period from the date of this Order. Proof of InterMedia's compliance with this Order shall be filed with the Commission within thirty (30) days of the release of this Order. Interest shall accrue, or be computed, at the prevailing U.S. Internal Revenue Service Rate for tax refunds and additional tax payments.

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