

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

DA 95-727

In the Matter of:)
)
HARRON CABLEVISION)
OF TEXAS, INC.)
)
Appeal of Local Rate Order)
of the City of Addison, TX)

ORDER

Adopted: April 3, 1995

Released: April 5, 1995

By the Chief, Cable Services Bureau:

I. Introduction

1. On January 12, 1995, Harron Cablevision of Texas, Inc. ("Harron"), the franchisee in the above matter, filed an Appeal and Request for Stay of a local rate order adopted by the City of Addison, Texas (the "City") on December 13, 1994. The City did not file an opposition to Harron's appeal and stay request.

2. In its local rate order, the City established rates for Harron's basic service tier, associated equipment and installations.¹ In its appeal, Harron contends that the City acted unreasonably when it rejected Harron's cost of service analysis and required Harron to reduce its rates for the basic service tier to the benchmark level.²

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

² Neither the City's local rate order, nor Harron's appeal, discuss the particular period of time to which Harron's cost of service analysis applies. However, the City's Finance Director, in a memorandum to the City Manager, states that the City ". . . reviewed the rates established by Harron Cablevision which became effective August 1, 1994." *See* Memorandum from Randy Moravec to Ron Whitehead (December 9, 1994) (discussing Harron Cablevision rate ordinance) ("Moravec Memorandum"). Thus, it appears that Harron's cost of service and benchmark filings are governed by the Commission's rules

II. Standard of Review

3. Under the Commission's rules, appeals of franchising authorities' local rate orders are reviewed by the Commission.³ 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.⁴ 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.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

III. Discussion

4. In order to justify its rates for the basic service tier, Harron submitted a cost of service filing to the City on August 15, 1994. Although the Commission had determined that a benchmark and price cap approach should serve as the primary method for regulating basic service tier and cable programming service tier rates, the Commission also concluded that because the benchmark methodology might not produce fully compensatory rates in all cases, it was appropriate to permit operators, as an alternative, to justify rates based on costs, using individual cost of service showings.⁷ The cost of service approach was intended to be used only if an operator believed that the maximum permitted rate under the benchmark formula would not enable the operator to recover costs reasonably incurred in providing rate regulated cable services.

regarding rates in effect subsequent to May 15, 1994. See Report and Order and Further Notice of Proposed Rulemaking, MM Docket 93-215, 9 FCC Rcd 4527 (1994); Third Order on Reconsideration, MM Docket 92-266, 9 FCC Rcd 4316, 4346 (1994) ("*Third Order on Reconsideration*").

47 C.F.R. § 76.944.

⁴ See Report and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266, 8 FCC Rcd 5631, 5731 (1993) ("*Rate Order*"); *Third Order on Reconsideration*, 9 FCC Rcd at 4346 (1994).

⁵ *Id.*

⁶ *Id.*

⁷ *Rate Order*, 8 FCC Rcd at 5794-95; see also 47 C.F.R. §76.922.

5. In its appeal filed on January 12, 1995, Harron contends that, rather than conducting a thorough review of Harron's cost of service justification under the Commission's rules, the City instead chose to impose arbitrarily upon Harron the maximum permitted basic service tier rate as set forth in Harron's benchmark calculation.⁸ In its local rate order of December 13, 1994, the City cites two reasons for determining that Harron's rates, as established by its cost of service analysis, are not in the public interest. First, the City contends that Harron incorrectly prepared its cost of service justification using system-level data, rather than franchise-level data.⁹ Second, the City cites the fact that TCI, another cable operator serving subscribers within the city limits, charges less than Harron for basic cable service.¹⁰ The City offers no other reasons for rejecting Harron's cost of service submission and instead adopting basic tier rates under the benchmark rate methodology.¹¹

6. Under the Commission's rules, operators are permitted to prepare cost of service analyses on a system-wide basis.¹² The Commission's rules specifically allow cable operators to identify investments, expenses and revenues at the franchise, system, regional and/or company level(s) in a manner that is consistent with the operator's accounting practices on April 1, 1993.¹³ Harron states that it did use the accounting level of the company's books on April 1, 1993.¹⁴ Thus, the fact that Harron's cost of service justification uses system-level data, rather than franchise-level data, is not a valid basis for the City's rejection of Harron's cost of service filing.

⁸ As part of its cost of service rate justification, Harron was required to attach a benchmark calculation to its cost of service filing. See *In the Matter of Cable Operator's Rate Justification Filings*, 9 FCC Rcd 7752 (1994). Cable operators must include benchmark calculations (on FCC Form 393 or its successor forms) with their cost of service justifications since the cost of service methodology is an alternative ratemaking methodology to be used when an operator believes its benchmark rate is inadequate. *Id.*

⁹ Local rate order at 1.

¹⁰ *Id.*

¹¹ In fact, the City's Finance Director stated that the City's cable consultants concluded that Harron's calculations were properly completed, assuming that the data used by Harron was correct. See Moravec Memorandum at 1.

¹² See 47 C.F.R. §76.924(c); *Rate Order*, 8 FCC Rcd at 5976-77.

¹³ 47 C.F.R. §76.924(c).

¹⁴ Appeal and Request for Stay at 2. Operators are required, however, to identify at the franchise level all costs of franchise requirements, franchise fees, local taxes and local programming. 47 C.F.R. §76.924(c).

7. Likewise, the fact that TCI, a neighboring cable system, charged less than Harron for basic tier service is also an invalid basis for rejecting Harron's cost of service submission. The City offered no further explanation or support for its position. Therefore, we cannot conclude that the City acted reasonably when it rejected Harron's cost of service submission.¹⁵ Accordingly, we remand Harron's appeal to the City for resolution in accordance with the terms of this Order.

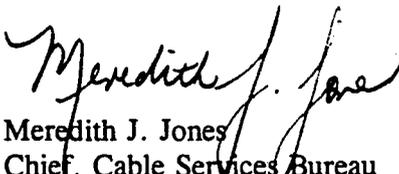
IV. Ordering Clauses

8. Accordingly, **IT IS ORDERED** that the appeal filed by Harron Cablevision of Texas, Inc. is **REMANDED** to the City for resolution in accordance with the terms of this Order.

9. **IT IS FURTHER ORDERED** that, in light of the resolution of its appeal herein, the Request for Stay filed by Harron Cablevision of Texas, Inc. **IS DISMISSED** as moot.

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

¹⁵ In a recent case, we similarly held that the City of Renton, Washington acted unreasonably when it rejected TCI's maximum permitted rates for converter boxes and remote controls, as calculated on TCI's FCC Form 393. The City claimed that the resulting rates were so "much greater than other [franchisees' and competitors'] rates as to raise a presumption of invalidity." Since the City of Renton offered no further explanation or support for its position, we held that its rejection of TCI's rates was unreasonable. *See* In the Matter of TCI of Seattle, Inc., DA 94-1605 (Cab. Serv. Bur., released December 28, 1994).