

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

**DA 95-1352**

In the Matter of: )  
 )  
ML MEDIA PARTNERS, L.P. )  
TRADING AS MULTIVISION CABLE TV )  
 )  
Appeal of Local )  
Rate Order of City of )  
Fairfield, California )

**ORDER**

**Adopted: June 15, 1995**

**Released: June 19, 1995**

By the Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. On August 11, 1994, ML Media Partners, L.P., trading as Multivision Cable TV ("Multivision"), filed with the Commission an Appeal From a Rate Order of the City of Fairfield, California ("Appeal") of the local rate order ("local order") adopted on August 2, 1994 by the City of Fairfield, California (the "City").<sup>1</sup> In its local order, the City adopted a number of findings which established Multivision's rates for basic cable service, equipment, installations and hourly service charges.<sup>2</sup> As part of this decision setting the basic tier rates, the City found Multivision's collective or package offering of certain individually offered ("a la carte") channels to be a regulated tier of service and, therefore, included those channels as

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<sup>1</sup> Other filings in this proceeding include an Opposition to Appeal of ML Media Partners, L.P., From a Rate Order of the City of Fairfield, California filed by the City of Fairfield on September 1, 1994 ("Opposition") and a Reply to Opposition to Appeal from a Rate Order of the City of Fairfield, California filed by Multivision on September 8, 1994 ("Reply").

<sup>2</sup> See Appeal, Exhibit F, Resolution No. 94-176, A Resolution of the City of Fairfield Ordering Multivision Cable TV to Reduce Its Rates and Charges For Basic Cable Service, Equipment and Installation and to Refund or Credit Subscribers For Overcharges.

regulated channels for purposes of the local order. In its local order, the City ordered Multivision to make refunds or to credit subscribers for all payments made in excess of the rates for basic service and equipment and installations set forth in the local order from September 1, 1993.<sup>3</sup>

2. On August 11, 1994, in addition to its Appeal, Multivision also filed a Request of ML Media Partners, L.P., Trading As Multivision Cable TV For Stay of a Rate Order of The City of Fairfield, California Pending Appeal. On November 10, 1994, we granted Multivision's petition for stay pending resolution of this Appeal.<sup>4</sup>

3. In its Appeal, Multivision challenges the local order on the following grounds: (1) the City's decision to treat the channels in the a la carte package as regulated channels is contrary to the objectives of the 1992 Cable Act and the Commission's a la carte rules; (2) the City miscalculated the amount of refunds due subscribers; (3) the City improperly disallowed capitalized costs for inside wiring, which in turn led to the improper calculation of Multivision's converter and installation rates; (4) the City improperly disallowed Multivision's home wiring maintenance fee; and (5) the City violated Multivision's procedural rights. We consider each of these issues in turn.

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

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<sup>3</sup> Under the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Pub. L. No. 102-385, 106 Stat. 1460 (1992), Communications Act of 1934, § 623(b), 47 U.S.C. § 543(b), and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment.

<sup>4</sup> See *Order* (Petition for Stay of Local Rate Order of the City of Fairfield, CA.), DA 94-1246 (Cab. Serv. Bur., released November 10, 1994).

<sup>5</sup> 47 C.F.R. § 76.944.

<sup>6</sup> See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order*, MM Docket 92-266, 8 FCC Rcd 5631, 5731 ("*Rate Order*"); and *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Buy-Through Prohibition, Third Order on Reconsideration*, MM Docket 92-266, 9 FCC Rcd 4316, 4346 (1994) ("*Third Reconsideration Order*").

<sup>7</sup> *Id.*

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.<sup>8</sup> With respect to a determination made by a franchising authority on the regulatory status of an a la carte package as part of its final decision setting rates for the basic service tier, the Commission has stated that "the Commission will defer to the local authority's findings of fact if there is a reasonable basis for the local findings," and the Commission "will then apply FCC rules and precedent to those facts to determine the appropriate regulatory status of the [a la carte package] in question."<sup>9</sup>

## II. DISCUSSION

### A. A LA CARTE

5. Multivision objects to the City's finding in the local order that the channels comprising Multivision's a la carte package must be included as regulated channels. Multivision argues that its a la carte package complies with the Commission's a la carte rules in effect at the time the package was created<sup>10</sup> and that the City's reliance upon the 15 interpretive guidelines announced by the Commission in March 1994 to determine the regulatory status of Multivision's a la carte channels has the effect of "retroactive rulemaking".<sup>11</sup>

6. The Multivision a la carte services at issue were first offered to subscribers on September 1, 1993, when Multivision restructured the service offerings on its Fairfield system. Multivision states that its September 1, 1993 restructuring offered five channels (The Discovery Channel, Turner Network Television, The Nashville Network, The Sci-Fi Channel, and WTBS) on an individual basis and also as a package that Multivision alleges is not subject to rate regulation. The Sci-Fi Channel was a new channel on Multivision's

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<sup>8</sup> *Rate Order*, 8 FCC Rcd at 5732; *Third Reconsideration Order*, 9 FCC Rcd at 4346.

<sup>9</sup> Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Second Order on Reconsideration, Fourth Report and Order, MM Docket No. 92-266, 9 FCC Rcd 4119, 4217 (1994) ("*Second Reconsideration Order*").

<sup>10</sup> See *Rate Order*, 8 FCC Rcd at 5836-5838.

<sup>11</sup> Appeal at 19. In the *Second Reconsideration Order*, the Commission set out 15 guidelines "that local authorities and the Commission should consider in assessing in an individual case whether an 'a la carte' package enhances consumer choice and does not constitute an evasion of rate regulation." *Second Reconsideration Order*, 9 FCC Rcd at 4214.

system and the remaining four channels in the a la carte package were formerly on Multivision's basic tier.

7. The facts presented in this appeal are similar to the facts presented in one of our recently issued letter of inquiry orders on a la carte packages, *Multivision Cable TV*, Prince George's County, Maryland, LOI-93-15, DA 94-1352 (Cab. Serv. Bur., released Dec. 2, 1994), in which we resolved the regulatory status of an la carte package similar to the a la carte package at issue in this appeal. Specifically, the a la carte package at issue in the *Multivision Cable TV* order was a five-channel package, with the package comprised of four channels removed from rate-regulated tiers and one new channel. In the *Multivision Cable TV* case, we found we could not say that it was clear that the a la carte package at issue was not a permissible non-rate regulated offering under our rules. We further concluded that in light of the prior confusion over what constituted a permissible non-rate regulated a la carte offering, it would be inequitable to subject the operator to refund liability on account of the a la carte package or to require the operator to restructure its tiers so as to return the channels offered in the a la carte package to regulated tiers. Instead, we found that the a la carte package at issue may be treated as a non-rate regulated new product tier under the Commission's *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Order on Reconsideration, Fifth Report and Order*, MM Docket Nos. 92-266 and 93-215, 10 FCC Rcd 1226 (1995) ("*Going Forward Order*").<sup>12</sup>

8. We find that the City's determination that Multivision's a la carte package is a regulated tier is inconsistent with the action taken in our letter of inquiry orders, and in particular, *Multivision Cable TV*. We further find that, in accordance with *Multivision Cable TV*, Multivision's a la carte package should not be treated as a rate-regulated tier of service. Accordingly, we are remanding this issue to the City so that it can enter an order consistent with our findings in *Multivision Cable TV*.<sup>13</sup>

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<sup>12</sup> New product tiers are cable programming services that, subject to certain conditions, are not rate regulated. *Going Forward Order*, 10 FCC at 1233-38. In the *Going Forward Order*, the Commission reconsidered its regulatory treatment of collective offerings of a la carte channels. Specifically, the Commission determined that such packages are cable programming service tiers within the meaning of Section 3(1)(2) of the 1992 Cable Act and therefore will be subject to our general rate regulation rules. *Id.* at 1243. However, the Commission also stated that with respect to packages created between April 1, 1993 and September 30, 1994, where it is not clear that a particular package was not a permissible offering under the a la carte rules in effect at the time it was created, the package may be treated as a new product tier. *Id.*

<sup>13</sup> We need not address Multivision's argument with respect to the "retroactive" application by the City of the 15 guidelines set forth in the *Second Reconsideration Order*, in light of the fact that we grant Multivision's appeal on the a la carte issue and remand this

## B. REFUND OFFSETS

9. Multivision alleges that the City erred in calculating Multivision's refund liability by not comparing the sum of Multivision's actual programming and equipment rates to the sum of its permitted unbundled rates. Multivision claims that the City compared only Multivision's equipment rates. Multivision argues that the City's lowering of Multivision's equipment and installation rates should have produced a corresponding increase in its programming rate. Multivision further argues that the City's error resulted in refund liability which exceeds Multivision's maximum liability under Commission rules. In response, the City asserts that its staff followed the method prescribed by Commission rules in calculating Multivision's refund liability. The City argues that its staff report, which was included in the local order, makes clear that, after reducing Multivision's equipment and installation rates, the City increased Multivision's base per-channel rate from \$0.575 to \$0.583 which led to an increase in its maximum monthly programming rate from \$17.25 to \$17.49.<sup>14</sup>

10. FCC Form 393 is the official form used by regulators to determine whether an operator's regulated rates for programming, equipment and installations were reasonable during the time period from September 1, 1993 until May 14, 1994.<sup>15</sup> Form 393 is divided into three separate, but interrelated parts. In Part II, the operator calculates its maximum permitted programming rates, while in Part III, the operator calculates its maximum permitted equipment and installation rates. Part I is a cover sheet that lists the various programming, equipment and installation rates that have been calculated in Parts II and III and compares them to the rates the operator has actually charged during the period of review.

11. The operator's maximum permitted rates are derived by completing Parts II and III of the Form 393, pursuant to which the operator calculates the actual aggregate revenues collected by the operator for regulated programming, equipment and installation, as of the initial date of regulation ("current rate") or as of September 30, 1992.<sup>16</sup> After

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case to the City.

<sup>14</sup> See Opposition at 11.

<sup>15</sup> To the extent that an operator has sought to take advantage of the refund deferral period available under the *Second Reconsideration Order*, 9 FCC Rcd at 4183-4185, the maximum permitted rates determined under Form 393 may also apply from May 15, 1994 until the date that the operator implemented its new rates, as determined under the Form 1200 series.

<sup>16</sup> An operator must calculate its rate level in effect on September 30, 1992, only if its current rate level is above the benchmark rate. If an operator's current rate level is at or below the benchmark rate, it is not required to calculate its September 30, 1992 per-channel

calculating actual aggregate revenues, the operator converts those revenues to a per-channel rate, and then compares the per-channel figure to the applicable benchmark rate. If an operator's current per-channel rate is below the applicable benchmark rate, then the operator's rate level is deemed reasonable, but it must remain at its current level. If its current per-channel rate exceeds the benchmark rate, the operator must then compare its September 30, 1992 per-channel rate to the applicable benchmark rate. If its September 30, 1992 per-channel rate is above the benchmark rate, it must reduce this rate level to the benchmark rate or by 10%, whichever reduction is less. After computing the permitted rate level in this manner (whether based on current rates or September, 1992 rates), monthly equipment and installation costs are removed to derive the maximum permitted programming rates. Maximum permitted rates for equipment and installations are based on actual cost and are calculated in Part III of the Form 393.

12. If a franchising authority does not dispute the bases for the figures presented in a cable operator's Form 393 or has not discovered any mathematical errors in the form, the franchising authority should then approve the operator's maximum permitted rates, as derived by the form. A franchising authority should not require the operator to set a particular rate for programming, equipment or installations at any rate less than its maximum permitted rate, even if its current or actual rate is below its maximum permitted rate. Instead, the franchising authority should allow the operator to charge up to its maximum permitted rates, as derived by Form 393.<sup>17</sup>

13. After setting the various regulated rates that an operator is permitted to charge on a prospective basis, a franchising authority should then determine if the operator is liable for any subscriber refunds. A refund liability can be imposed when an operator's charges exceed maximum permitted levels during the applicable period of review.<sup>18</sup> If an operator's aggregate revenues computed from its actual rates exceed its revenues computed from its permitted rates during the period of review, the operator must refund the difference to subscribers.<sup>19</sup> If the operator's aggregate revenues computed from its permitted rates exceeded its aggregate revenues computed from its actual rates, the operator will not be

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rate level.

<sup>17</sup> An operator is not required, however, to raise its rates to the maximum permitted level. An operator may voluntarily choose to charge less than the maximum permitted rate.

<sup>18</sup> See 47 C.F.R. § 76.942.

<sup>19</sup> See *Third Reconsideration Order*, 9 FCC Rcd. at 4353 ("Although maximum permitted rates are always determined in an unbundled basis, *i.e.*, separately for program service and equipment, refund liability may stem from bundled rates. We conclude that the refund liability should be calculated based on the difference between old bundled rates and the sum of the new unbundled program service charge(s) and the new unbundled equipment charge(s).").

required to issue any refunds for that period of review. In this proceeding, any refunds to be paid by Multivision should be calculated based on this method.<sup>20</sup>

14. We find that the City's staff followed the method prescribed by Commission rules for calculating an operator's refund liability. The staff's recommendations with regard to Multivision's refund liability were incorporated into the City's local order. We note that Multivision, in its Reply to the City's Opposition, does not dispute the City's claim that its staff did offset Multivision's maximum permitted programming rates by Multivision's reduced equipment and installation rates. Accordingly, we deny Multivision's Appeal with regard to the City's calculation of Multivision's refund liability.

### C. CAPITALIZED COSTS OF INSIDE WIRING

15. Multivision objects to the City's exclusion of Multivision's capitalized costs of labor and materials associated with the installation of inside wiring on Schedule A of Form 393.<sup>21</sup> Multivision argues that these costs are properly includable on Schedule A as part of Multivision's total capital costs. Multivision further argues that the City's error in disallowing Multivision's capitalized costs for inside wiring led to a number of other errors including the City's miscalculation of Multivision's hourly service charge ("HSC") and its converter, installation and field downgrade charges. In response, the City asserts that Multivision failed to justify on Schedule A its capital costs for inside wiring, while the City's staff report provides sufficient evidence to support exclusion of these costs. The City states that it concluded that the capitalized labor costs for inside wiring were not properly includable on Schedule A of Form 393 based upon prior Commission statements, FCC Form 1205 (Instructions For Determining Costs of Regulated Cable Equipment and Installations)

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<sup>20</sup> However, we note that operators may not set programming service rates at higher than permitted maximum rates to recover lost equipment revenues when they voluntarily price equipment rates below their maximum permitted levels. To permit operators to do so would undermine Congress's intention to create a competitive market of cable equipment providers. See Communications Act, § 624A(c)(2)(C), 47 U.S.C. § 544A(c)(2)(C); Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment, First Report and Order, 9 FCC Rcd 1981, 1982 (1994).

<sup>21</sup> The Commission defines the term "cable home wiring" or "inside wiring" as that wiring located within the premises or dwelling unit of the subscriber that has been installed by the cable operator or its contractor. The demarcation point is no more than 12 inches outside the point where the wiring enters the outside wall of the subscriber's premises. Cable wiring and other equipment beyond the demarcation point is deemed to be part of a cable operator's distribution plant. See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring, Report and Order, MM Docket 92-260, 8 FCC Rcd 1435, 1437 (1993).

and the guidance of the staff of the Cable Services Bureau ("Bureau").<sup>22</sup>

16. Schedule A of Form 393 is used for the computation of the capital costs of equipment necessary for maintenance and installation of cable facilities and cable service. Schedule A lists various types of equipment for which capital costs can be included, such as, vehicles, tools and maintenance facilities. A cable operator's "maintenance facility" includes its buildings, tools, and equipment necessary for the repair and maintenance of vehicles and equipment. Additionally, related parts of Form 393 include Schedules B and C. Schedule B is used for the computation of annual operating expenses, including labor costs, associated with installation and maintenance of equipment. Schedule C is used for the computation of capital costs associated with leased customer equipment. In Step A, Part III of Form 393, cable operators compute their HSC. The HSC is designed to cover the costs of service installation and maintenance of customer equipment. An operator determines its permitted HSC by computing its annual capital costs plus expenses for the maintenance of customer equipment and the installation of basic tier service and dividing this sum by the total number of hours expended for maintenance and installation of customer equipment and service. The calculation of the HSC includes an operator's labor costs associated with customer equipment as part of its total operating expense but excludes the purchase cost of such equipment. The purchase costs are calculated separately with respect to each type of equipment. An operator, after calculating its HSC, uses it as a factor in developing permitted charges for installation and monthly lease rates of customer equipment.

17. The regulatory treatment of labor costs associated with inside wiring is distinct from the regulatory treatment of the cost of materials associated with such wiring. Cable operators may not capitalize labor costs associated with inside wiring and, therefore, these costs are not includable on Schedule A.<sup>23</sup> Labor costs associated with the installation of inside wiring are properly included in the charges for the installation of inside wiring. Such labor costs are reportable on Schedule B and included in the installation charges computed on Schedule D. With respect to the cost of materials associated with inside wiring, cable operators have the option of capitalizing those costs and establishing a separate monthly charge for leasing inside wiring or selling inside wiring at a regulated rate (or giving it away).<sup>24</sup> If a cable operator chooses to capitalize the cost of materials for inside wiring, it is permitted to include those costs on Schedule C. Alternatively, if a cable operator chooses not to capitalize the cost of materials for inside wiring, the cost of materials could be included as an expense item on Schedule B.

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<sup>22</sup> See Opposition, Exhibit A.

<sup>23</sup> See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, 9 FCC Rcd 1164, 1200-1201 (1993) ("*First Reconsideration Order*"); Form 1205, Instructions, Note 2.

<sup>24</sup> See *First Reconsideration Order*, 9 FCC Rcd at 1201.

18. Based upon the foregoing, we agree with the City's exclusion of Multivision's capitalized labor costs and cost of materials from Schedule A of Form 393. We find that the City had a reasonable basis to exclude Multivision's labor costs from Schedule A because such costs can not be capitalized. Since our rules permit operators to capitalize only the cost of materials associated with inside wiring as leased customer equipment on Schedule C, we find that the City had a reasonable basis to exclude those costs from Multivision's Schedule A. The record below is unclear as to whether the City allowed Multivision to recalculate its labor costs associated with inside wiring on Schedule B and as part of Multivision's HSC. Accordingly, we are remanding this issue for further proceedings consistent with our findings.

#### **D. INSIDE WIRING MAINTENANCE FEE**

19. Multivision objects to the City's disallowance of Multivision's home wiring maintenance fee. On September 1, 1993, Multivision began charging a separate fee for maintenance of inside wiring. Prior to September 1, 1993, Multivision states that the wire maintenance fee was included in its rates for programming and equipment and that wire maintenance was provided to all customers. Multivision argues that its wire maintenance fee was instituted in an effort to comply with the requirement that cable operators "unbundle" equipment and installation rates from the rates for the basic service tier.<sup>25</sup> The City responds that inside wiring must be categorized as regulated equipment leased to subscribers, distribution plant owned by Multivision, or wire sold to subscribers.<sup>26</sup> Multivision, the City further asserts, did not justify the maintenance fee as either a charge for maintaining leased equipment or as a service contract for maintaining equipment sold to subscribers. The City argues that the inside wiring should be considered part of Multivision's distribution plant, the maintenance of which is not properly chargeable to subscribers since it is already being recovered in Multivision's rates for basic service and installations.<sup>27</sup>

20. Inside wiring is not part of a cable operator's distribution plant.<sup>28</sup> It is customer equipment,<sup>29</sup> the regulatory treatment of which depends upon who owns it. The record in this Appeal, with regard to the ownership of the inside wiring, is unclear. 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. If an operator

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<sup>25</sup> See 47 C.F.R. § 76.923.

<sup>26</sup> See Opposition at 11.

<sup>27</sup> *Id.* at 12.

<sup>28</sup> See note 21, *supra*.

<sup>29</sup> See 47 C.F.R. §76.923.

installs inside wiring and retains ownership of that wiring, our rules specifically provide that the rate for the lease of that equipment must be justified in Part III of Form 393.<sup>30</sup> That rate for the operator-owned wiring includes a component for maintenance costs.<sup>31</sup> Under those circumstances, Multivision's subscribers can not also be charged a separate wire maintenance fee.<sup>32</sup> On the other hand, if Multivision's subscribers own their inside wiring, no lease rate would apply, obviously, but Multivision's costs of providing any maintenance and repair of that wiring may be recovered through a service contract.<sup>33</sup> Our rules provide that charges for such service contracts must be based on the operator's HSC multiplied by either the estimated average number or the actual number of hours for maintenance and repair.<sup>34</sup> However, we are unable to rule on the issue presented in this appeal since the facts in the record below are unclear. Accordingly, we remand this issue to the City in order to allow Multivision to clarify these facts consistent with our findings.

## E. PROCEDURAL ISSUES

21. Finally, Multivision challenges the City's rate order on two procedural grounds. First, Multivision alleges that the City failed to provide adequate justification for the rates prescribed in its local order. Second, Multivision alleges that the City failed to provide Multivision with an adequate opportunity to respond to the City's decision to disallow Multivision's home wiring maintenance fee which occurred only hours before the local order was adopted. The City, in response to both allegations, asserts that Multivision has not established that the City violated any of the Commission's procedural rules or was so unfair so as to deprive Multivision of due process. With regard to justification of the rates

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<sup>30</sup> Under 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." Form 393, Part III provides space to compute maximum permitted rates for leased equipment which, per the form's instructions, includes "cable home wiring."

<sup>31</sup> *First Reconsideration Order*, 9 FCC Rcd at 1200.

<sup>32</sup> See 47 C.F.R. § 76.923(a)(4).

<sup>33</sup> See 47 C.F.R. § 76.923(i).

<sup>34</sup> *Id.* Rates for service contracts are subject to rate regulation for the same reason that sales of equipment are regulated. See *First Reconsideration Order*, 9 FCC Rcd at 1192. If we were to exempt service contracts from regulation, we could create a loophole that would allow operators to avoid our rules on equipment rates merely because of the form in which the equipment is offered to subscribers. Under our rules, the lease and maintenance of inside wiring owned by an operator is rate-regulated. An offer by the operator to maintain that wiring if it is owned by the subscriber must also be rate-regulated to close the loophole that would otherwise exist.

prescribed in its local order, the City states that Multivision received the City's staff report on the first day that it was made public, and that it provided prior notice of its views to Multivision in two statements, dated February 28, 1994 and July 22, 1994. The City argues that those prior notices together with the staff report provided Multivision with adequate explanation and justification for the rates prescribed in the City's local order.

22. With regard to the City's decision to disallow Multivision's home maintenance fee, Multivision alleges that it was denied sufficient time to address this amendment to the local order at the public hearing in which the local order, as amended, was adopted. The City responds that it sent a letter by facsimile to Multivision on August 2, 1994, the day the local order was adopted, informing Multivision of the City's decision to disallow Multivision's home wiring maintenance fee. The City argues that any disadvantage that Multivision claims as a result of the timing of the City's decision on Multivision's home wiring maintenance fee has been cured by its opportunity to appeal to the Commission.

23. Our rules require that a franchising authority must provide a reasonable opportunity for consideration of the views of interested parties.<sup>35</sup> Our rules also require the franchising authority to issue a written report if it disallows the operator's rates.<sup>36</sup> The written report must affirmatively demonstrate why the operator's rates are unreasonable and why the prescribed rates are reasonable.<sup>37</sup> There is no requirement that the franchising authority prepare, or have a consultant prepare, a new Form 393. It is sufficient under our rules that the local authority consider the written views of interested persons on issues raised about the operator's proposed rates.<sup>38</sup>

24. Based upon our review of the record relating to the City's provision of adequate justification for the rates prescribed in its local order; we conclude that the City has conducted its review of Multivision's Form 393 in a reasonable manner in compliance with the procedural safeguards established by the Commission. Multivision was given notice of the City's views and an opportunity to comment on at least two of the issues which are the subject of this Appeal, *i.e.*, the regulatory treatment of Multivision's a la carte services and its capitalized costs for inside wiring. The City exchanged written correspondence on those issues which were raised by its staff, and gave Multivision an opportunity to review the staff recommendations and calculations used to arrive at the maximum permitted rates recommended to the City.<sup>39</sup> The local order sets forth and affirmatively demonstrates the

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<sup>35</sup> 47 C.F.R. § 76.935.

<sup>36</sup> 47 C.F.R. § 76.936.

<sup>37</sup> See Rate Order, 8 FCC Rcd at 5723-5724.

<sup>38</sup> Id. at 5724, n. 367.

<sup>39</sup> See Opposition and Exhibits A - M(4) thereto.

findings of the City's staff with regard to the issues that had been discussed previously. With regard to the City's amendment of its local order, we find that the City's last minute decision to disallow Multivision's home maintenance fee and to deny Multivision an opportunity to be heard on this issue was unreasonable. We note that the procedural defect here will be cured by our decision to remand the issue of Multivision's home wiring maintenance fee to the City for further proceedings consistent with our findings.

### III. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that the Appeal of the local order, with regard to the issue of the regulatory status of Multivision's a la carte package, is **REMANDED** to the City for resolution in accordance with the terms of this Order.

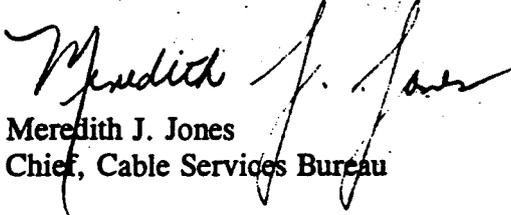
26. **IT IS FURTHER ORDERED** that the Appeal of the local order, with regard to the capitalized labor costs for inside wiring, is **REMANDED** to the City for resolution in accordance with this Order.

27. **IT IS FURTHER ORDERED** that the Appeal of the local order, with regard to the disallowance of the home maintenance fee, is **REMANDED** to the City for resolution in accordance with this Order.

28. **IT IS FURTHER ORDERED** that the petition for stay of the local order pending resolution of this Appeal is **VACATED**.

29. 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