

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION**

In the Matter of)	Docket No. Y-97 INC, Y-97 EQU
)	Date Issued: March 25, 1999
)	
Harron Communications Corp.)	Abington, CUID MA 0225
)	Bourne, CUID MA 0247
)	Halifax, CUID MA 0229
For a Determination of)	Pembroke, CUID MA 0228
Cable Television Rates)	Plympton, CUID MA 0245
)	Rockland, CUID MA 0224
)	Sandwich, CUID MA 0246

RATE ORDER

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FOR: HARRON COMMUNICATIONS CORP.
Petitioner

I. INTRODUCTION

On February 19, 1999, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy (“Department”) issued an Interlocutory Rate Order in the above-captioned proceeding. Harron Communications Corp., Abington Y-97 INC, Y-97 EQU et al., Interlocutory Rate Order, (issued February 19, 1999) (“Interlocutory Rate Order”). In response to the Interlocutory Rate Order, on March 10, 1999 Harron Communications Corp. (“Harron”) refiled FCC Form 1210s for the period July 1, 1996 through June 30, 1997.¹ In Harron’s letter accompanying its March 10, 1999 FCC Form filings (the “March 10, 1999 Letter”), Harron requested that the Cable Division reconsider certain rulings reached in the Interlocutory Rate Order. The Cable Division treats this request as a Motion for Reconsideration.

II. MOTION FOR RECONSIDERATION

In its March 10, 1999 letter, Harron requested that the Cable Division reconsider its Interlocutory Rate Order because, “first, the Federal Communications Commission’s benchmark rates do not incorporate the subsidy for senior discounts; second, we believe that the senior discount provision in Harron’s Franchise Agreement with Rockland is not enforceable if Harron is not permitted to pass through the costs of such discounts to other subscribers” (March 10, 1999 Letter at 1).

The Cable Division concludes that a request or motion for reconsideration is not appropriate at this time. Under the Massachusetts Administrative Procedure Act, G.L. c. 30A, § 14, rulings that are interlocutory in nature are not immediately reviewable. Cella, Administrative Law and Practice, Massachusetts Practice Series, Vol. 40, § 1756. Only a “final decision of any agency in an adjudicatory proceeding ... shall be entitled to a judicial review....” G.L. c. 30A, § 14. Although the procedural rules of the Department are not directly applicable to the Cable Division, the general principles followed by the Department are applicable here. The Department has concluded that its own procedural rules do not provide for motions for reconsideration of interlocutory orders. As the Department observed: “The Department’s procedural rule is based on the principle of administrative efficiency. The Department’s ability to make final determination on issues and carry out its regulatory duties would be seriously hampered if it were required to reconsider every preliminary, procedural and interlocutory decision.” Petition of Boston Edison Company and Boston Mergeco Electric Company, D.P.U. 97-63, Interlocutory Order on Motion to Vacate and Reconsider by Cablevision Systems Corporation and on Motion for Reconsideration by New England Cable Television Association, Inc. (issued

¹ Harron also filed FCC Form 1210s for the period July 1, 1997 through June 30, 1998, which will be reviewed in Harron’s next rate proceeding. As directed by the Interlocutory Rate Order, Harron also filed an FCC Form 1205 for the fiscal year ending December 31, 1998, which will also be reviewed in Harron’s next rate proceeding.

October 10, 1997) at 8. Thus, given the interlocutory nature of our Order, we conclude that reconsideration is not appropriate. Accordingly, Harron's request for reconsideration of the Interlocutory Rate Order is denied.

Even if the Cable Division were to reach the merits of Harron's request for reconsideration, we would not find Harron's reasons adequate grounds for reconsidering the Interlocutory Rate Order. Harron's argument that the FCC had not taken senior discounts into account when it established its benchmark rates overlooks the FCC's discussion of senior discounts in its initial Report and Order. See In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266, FCC 93-177 (released May 3, 1993) at ¶¶ 423; 426-430. The FCC consistently refers to "reasonable discounts for senior citizens," without suggesting that the uniform rates established under its rate rules can be adjusted upward to pay for senior discounts. Moreover, Harron has not addressed the issues raised in the FCC's Bert Robertson and Leonardo Balatbat/Senior Citizen Discounts, DA 97-382, CSB-ILR 97-1 (released February 19, 1997) (the "Robertson Letter") that was discussed in the Interlocutory Rate Order. Harron did not challenge the correctness of the Cable Division's conclusion that "we interpret the FCC's reference to MPR [maximum permitted rate] as a rate that does not include a senior citizen discount component." Interlocutory Rate Order at 5. But based on the Cable Division's interpretation, no senior discount subsidy can be added on top of the FCC's maximum benchmark rates, a result which is directly contrary to Harron's argument. The Cable Division has been provided with no basis for changing the controlling interpretation of the Robertson Letter it adopted in the Interlocutory Rate Order. Nonetheless, the Cable Division clarifies our conclusions on the issue of senior citizen discounts in order to provide operators and communities with guidance as they proceed with license negotiations.

As an initial matter, the Cable Division may not prohibit a cable operator from offering a reasonable senior citizen discount. The Cable Act provides that: "no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts...."² 47 U.S.C. § 543(e)(1). However, the Cable Division must ensure that a cable operator's BST rates are reasonable and comply with the Cable Act and the FCC's rate regulations. 47 C.F.R. § 76.922(a). Furthermore, a cable operator's basic service tier ("BST") rates must not exceed the MPR as computed pursuant to the regulations. 47 C.F.R. § 76.922(a). This includes a cable operator's treatment of any senior citizen discount.

To this end, the Cable Division has applied the analysis contained in the FCC's Robertson Letter. Under the Robertson Letter's analysis, Harron cannot pass on a senior discount subsidy to non-senior subscribers if the resulting BST rate actually charged to non-senior subscribers exceeds the BST MPR excluding the subsidy that is calculated pursuant to the FCC's rate forms. The Cable Division is not questioning the appropriateness of a senior

² The FCC's rate regulations include virtually identical language at 47 C.F.R. § 76.983(a).

discount subsidy, per se. To the extent that Harron charges a BST rate to non-senior subscribers that includes a subsidy, but which nevertheless does not exceed the BST MPR calculated excluding the subsidy, the BST rate would be deemed reasonable. The Cable Division notes that in five of Harron's seven Massachusetts communities, Harron has chosen a BST rate for non-senior subscribers that presumably includes a charge for the senior discount subsidy that is less than the MPR that would result if the subsidy were removed.

In addition, the Cable Division's ruling does not apply to the cable programming services tier ("CPST") portion of Harron's senior discount. Harron's responses to the Cable Division's record requests show that in all seven of Harron's Massachusetts communities, there is a senior discount for the CPST (CATV-RR-8). Under the Cable Act, as amended in 1996, Harron qualifies as a "small cable operator" under 47 U.S.C. § 543(m)(2), and its CPST rates are therefore unregulated. Harron Cablevision of Massachusetts, Inc., Abington et al., Y-94 BNK et al., (issued June 25, 1996)

at 4, n.15. Consequently, the FCC's rate regulations do not restrict Harron's CPST senior discounts in any way, including Harron's ability to pass-through the cost of the CPST senior discount to other subscribers through its CPST rates.³

III. CONCLUSION AND ORDER

Pursuant to the Standard Administrative Rules of Practice and Procedure, at 801 CMR 1.01(10)(n)(2), the Cable Division hereby incorporates by reference the determinations made in Sections II, III and IV of Harron Communications Corp., Abington Y-97 INC, Y-97 EQU et al., Interlocutory Rate Order, (issued February 19, 1999).

Based on our review, the Cable Division finds that Harron's refiled FCC Form 1210s are in compliance with our Interlocutory Rate Order. Accordingly, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Harron's FCC Form 1210s as filed on March 10, 1999 for Abington, Bourne, Halifax, Pembroke, Plympton, Rockland and Sandwich. Harron's FCC Form 1210s for the period July 1, 1997 through June 30, 1998, and its FCC Form 1205 for the fiscal year ending December 31, 1998, which were also filed on March 10, 1999, will be reviewed in Harron's next rate proceeding.

³ Because the Cable Division is requiring Harron to remove the entire senior citizen discount from its FCC Form 1210s, we need not rule on one other issue raised by the FCC Form 1210s. Harron has included, as BST franchise related costs on FCC Form 1210, Line D6, both the BST and CPST portions of its senior citizen discounts. This is apparent from an inspection of Harron's FCC Form 1210s and Harron's responses to CATV-RR-8. This would appear to violate the FCC's allocation rules applicable to the BST and CPST cost categories, at 47 C.F.R. § 76.924(e)(1) and (2). That Harron's CPST is unregulated does not allow Harron to allocate its CPST expenses to the BST.

In the event that refunds are required pursuant to this Rate Order, the Cable Division directs Harron to file, not later than 14 days from the date of this Order, a written statement of its Refund Plan, which shall satisfy the provisions of 47 C.F.R.

§ 76.942. The Refund Plan shall, at a minimum, set forth Harron's method of providing refunds to subscribers, identify the applicable interest rate or rates to be applied to the refunds, and explain how the interest on the refunds was calculated.

The attached schedule provides the current and permitted basic service tier programming and equipment rates for each community.

**By Order of the
Department of Telecommunications and Energy
Cable Television Division***

Alicia C. Matthews /ksw

**Alicia C. Matthews
Director**

** Formally, the "Division of Community Antenna Television" under G.L. c. 166A, § 2.

APPEALS

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 1997, c. 164, § 273. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within seven days of the filing of the initial petition for appeal.

