

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:)
)
Adelphia Communications Corporation)
)
For a Determination of)
Cable Television Rates)

To: Media Bureau

File No. CSB-

OPPOSITION OF THE CABLE TELEVISION DIVISION OF THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
TO ADELPHIA COMMUNICATIONS CORPORATION'S
APPEAL OF LOCAL RATE ORDER

INTRODUCTION

The Cable Television Division¹ ("Cable Division") of the Massachusetts Department of Telecommunications and Energy respectfully opposes the appeal by Adelphia Communications Corporation ("Adelphia" or "Company") of a local rate order issued by the Cable Division on July 18, 2002 ("Rate Order"). A copy of the Rate Order is attached as Exhibit A.

The Cable Division is the local franchising authority for rate regulation in the Commonwealth of Massachusetts. Pursuant to its authority to review basic service tier programming and equipment rates, the Cable Division rejected Adelphia's Federal Communications Commission ("Commission") Form 1205 for the below noted communities.² Specifically, the Cable Division found that Adelphia failed to meet its burden of proof with respect to establishing the reasonableness of its proposed equipment rates. Rate Order at 5. As

¹ Formally "Division of Community Antenna Television" under M.G.L. c. 166A § 2.

² The affected communities are: Abington, Adams, Amesbury, Aquinnah, Bourne, Cheshire, Clarksburg, Duxbury, Edgartown, Essex, Falmouth, Gloucester, Great Barrington, Halifax, Kingston, Lee, Lenox, Manchester-by-the-Sea, Marshfield, Merrimac, North Adams, Oak Bluffs, Pembroke, Plymouth, Plympton, Rockland, Rockport, Salisbury, Sandwich, Sheffield, and Stockbridge.

a result, the Cable Division rejected the Form 1205 and directed Adelphia to refile the Form in compliance with the Rate Order.³ *Id.* at 6. Adelphia filed an Appeal with the Commission on August 19, 2002.

The issue before the Commission is whether the Cable Division was reasonable and timely in rejecting Adelphia's equipment rates based on Adelphia's failure to provide reliable evidence concerning its levels of inventory. As fully discussed below, the Cable Division reasonably applied the Commission's rate regulations, particularly those applicable to the review procedures.

STANDARD OF REVIEW

In ruling on appeals of local rate orders, the Commission must sustain the franchising authority's decision where there is a reasonable basis for that decision. The Commission should not conduct a de novo review of the franchising authority's rate order. Rather, the Commission may reverse a franchising authority's decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering the local rate order. See Harron Communications Corp., 15 FCC Rcd. 7901, DA 00-1002, CSB-A-0622, at 1-2 (2000).

PROCEDURAL HISTORY

Historically, Adelphia submitted rate forms to the Cable Division on or about May 1 of each year, for rate changes to become effective on August 1 of that year. Having not received any rate forms from the Company in early 2000, the Cable Division issued a letter to the

³ On July 31, 2002, the Company notified the Cable Division that it would not comply with the Rate Order. On August 12, 2002, the Cable Division issued an Order Mandating Compliance. (A copy of the Order is attached as Exhibit B).

Company on August 3, 2000, asking it to confirm that no Form 1240 was required pursuant to 47 C.F.R. § 76.922(e)(2)(ii)(B) and directing the Company to comply with the requirement to file a Form 1205 at least annually pursuant to 47 C.F.R. § 76.923(n)(3). (A copy of the letter is attached as Exhibit C). In response, the Company submitted the Form 1205 for the year ending December 31, 1999 ("1999 Form 1205") on August 18, 2000. The Cable Division's review of this form included a hearing on December 5, 2000, and resulted in a rate order issued on March 12, 2001. (A copy of the order is attached as Exhibit D).

On December 29, 2000, Adelphia filed Form 1240s for its Massachusetts communities, proposing rate changes to become effective on April 1, 2001. In compliance with 47 C.F.R. § 76.922(e)(1), the Company submitted a Form 1205, the 1999 Form 1205. Since the review of the 1999 Form 1205 was pending, the Cable Division commenced a proceeding to review the Form 1240 only. This proceeding included a hearing conducted on March 28, 2001, and resulted in a rate order on August 1, 2001. ("2001 Rate Order"). (A copy of the 2001 Rate Order is attached as Exhibit E). During the hearing, the Cable Division issued a record request that the Company revise its true-up period calculation on the forms submitted for several communities. See 2001 Rate Order at 1. The Company complied with the Cable Division's record request on April 2, 2001. (A copy of Adelphia's cover letter is attached as Exhibit F).

Under the same cover letter received on April 2, 2001, the Company submitted a Form 1205, based on data for the year ending December 31, 2000 ("2000 Form 1205"). The Cable Division issued an Extension Order on May 2, 2001, and an Accounting Order on July 20, 2001. (A copy of each of these orders is attached as Exhibits G and H, respectively).

The Cable Division conducted a hearing on this filing on November 6, 2001. The Rate Order issued as a result of this investigation is the subject of the instant appeal.

ARGUMENT

- A. The Cable Division followed the Commission's rules in reviewing Adelphia's Form 1205 and was not barred by the passage of time from issuing its Rate Order regarding Adelphia's Form 1205.

Adelphia argues that the Cable Division's action was time barred, claiming that the Form 1205 at issue was an amendment of the 1999 Form 1205 filed with the Form 1240 on December 29, 2000. The Company, therefore, contends that the Cable Division was required to take action by December 29, 2001, one year from the alleged date of filing. The Company's argument lacks merit because the Form 1205 filed on April 2, 2001, was based on data for the year ending December 31, 2000, and as such was a new filing and not an amendment to the 1999 Form 1205.

Adelphia's use of the word "amended" violates the common meaning of this word. According to Black's Law Dictionary, the word "amend" means "To improve. To change for the better by removing defects or faults. To change, correct, revise." Black's Law Dictionary 80 (6th ed. 1990). Adelphia did not merely change, correct, or revise its form with improved data from the 1999 fiscal year, but rather provided an original form based on data from a subsequent year. A new form using entirely new data does not "amend" or revise the prior fiscal year's form. Furthermore, the Commission's rate regulations provide that only a Form 1240, which includes projected figures, may be amended after a rate filing.

47 C.F.R. § 76.933(g)(1). The rule recognizes that changes in circumstances may affect a cable operator's projected figures and thus an opportunity to amend must be provided. Id. Since the Form 1205 is based solely on historical data, the Commission recognized that there

would be no material changes to correct through an amendment process, and therefore did not explicitly allow for one.

There can be no mistake that the 2000 Form 1205 was a matter independent of any Form 1240 proceeding. The Cable Division assigned a separate docket number to the matter, Docket No. CTV 01-4. The Cable Division issued both an Extension Order and an Accounting Order, the propriety of which were not challenged by Adelphia. A separate hearing was conducted. At no time did the Company submit a motion to re-open the record in the prior Form 1240 proceeding or a motion to consolidate the proceedings. Significantly, Adelphia did not refer to the 2000 Form 1205 as an "amendment" in its April 2, 2001 cover letter, or at any time prior to the Cable Division's Rate Order. Moreover, the Company's own actions with respect to its rate adjustments support the Cable Division's conclusions. Not only did Adelphia submit its Form 1240 and Form 1205 on different dates, it adjusted its basic service tier programming rates in April 2001, but did not change its equipment rates until August 2001. Although Adelphia undoubtedly understood the nature of its April 2, 2001, filing, the Company did not challenge the Cable Division's review of the 2000 Form 1205 as an independent filing until it received an unfavorable ruling. Since the 2000 Form 1205 was not filed in conjunction with a Form 1240, the Cable Division was not restricted to issuing its decision within a one-year period, but could follow the less-restrictive standard procedures, and thus, its decision in this matter is not time-barred.

Adelphia asserts that even if the 2000 Form 1205 were not submitted with a Form 1240, its Form 1205s must be reviewed within one year because the Company employs the annual rate adjustment methodology. Appeal at 4, 5. Adelphia misinterprets the Commission's rules with respect to Form 1205 filings. The Commission has established two

different procedural timetables for the review of Form 1205 filings, one for those filed in conjunction with a Form 1240 and a second for all other Form 1205 filings. Extension of Time to File FCC Form 1205 Pursuant to Sections 76.922, 76.923 of the Commission's Rules, 12 FCC Rcd. 10193, DA 96-2161 (1996); see also 47 C.F.R. § 76.933. The Commission has held that all Form 1205 annual rate adjustments submitted with a Form 1240 shall be subject to the same franchising authority review procedures and effective dates as those of the Form 1240 annual rate adjustment system. Id. at ¶ 4; see also 47 C.F.R. § 76.933(g). However, the Commission stated that all other annual submissions of Form 1205 not accompanied by a Form 1240 shall be subject to the standard franchising authority review procedures and effective dates. Id. at ¶ 4, n. 14; see also 47 C.F.R. § 76.933(a) and (b). The Commission, in establishing these two timetables, sought to encourage cable operators to synchronize their Form 1240 and 1205 filings to minimize subscribers' rate adjustments and franchise authorities' rate proceedings. Id. at ¶ 4. As an incentive to operators, the Commission guaranteed review within one year of the filings. Id. Where the Form 1205 is not filed with a Form 1240, however, the Form 1205 review would be subject to the standard procedures. Id. at ¶ 4, n. 14.

Since the 2000 Form 1205 was not filed with a Form 1240, the Cable Division acted appropriately in following the time periods specified by 47 C.F.R. § 76.933(a), (b) and (c). Having properly issued its Extension Order and Accounting Order, the Cable Division was under no obligation to issue a final order by a date certain. The Cable Division's Rate Order reasonably applied the Commission's regulations, and the Commission should, therefore, deny Adelpia's appeal.

B. The Cable Division acted properly in rejecting Adelphia's digital inventory amounts and requiring Adelphia to refile its Form 1205.

In establishing the reasonableness of inventory levels, the burden of proof is on the cable operator, not the local rate regulator. Crown Media, Inc. d/b/a Crown Cable, 10 FCC Rcd. 6626, DA 95-720, at ¶¶ 15-17 (1995). In the Rate Order, the Cable Division found that Adelphia had failed to establish its burden based, in part, upon its failure to provide any evidence to justify the cost of the significant amount of additional units it conceded it had purchased. Rate Order at 4. The Cable Division found that:

Adelphia merely outlined its plan to rapidly deploy these [digital equipment] units, but provided no evidence that subscriber demand for digital service had similarly increased. In fact, the testimony indicates that Adelphia's motivation to purchase these units at this time was to take advantage of special purchase agreements with digital converter manufacturers and, since Adelphia had to take delivery of these units on a specific date and the number of units purchased exceeded the demand for deployment at that time, Adelphia was required to warehouse the units.

Id.

In its petition for appeal, Adelphia does not contend that it had met its burden nor does it point to record evidence on which the Cable Division reasonably could have relied to make a finding that the amount of inventory was reasonable. Thus, this matter is inapposite to Falcon Community Ventures I, 13 FCC Rcd. 12503, DA 98-1266 (1998), cited by Adelphia. In Falcon, the Commission overturned the franchising authority's decision because the City provided no explanation for the decision. Id. at ¶ 5. This matter is analogous to Crown Media where the Commission upheld the franchising authority's rejection of inventory costs because the company had failed to establish a need for additional units. See Crown Media, at ¶¶ 15-17.

The Cable Division provided the Company with an opportunity to put the inventory figures into perspective. See Rate Order at 4. After the Company stated that response to the

Cable Division's initial request "would not be an easy process," the Company provided evidence that was wholly unreliable. *Id.* at 4, n. 4. One particularly egregious example was that Adelphia provided a schedule showing Massachusetts-only data that reported higher addressable converter and remote control inventory totals as of December 31, 2000, than were reported on the 2000 Form 1205 which included data for the entire New England region.⁴ Rate Order at 5. In addition, Adelphia reported that during 2000, in its recently acquired systems, there was a 5.6 percent increase in deployed digital units. *Id.* However, this percentage was inconsistent with other data showing that on December 31, 1999, no digital units had been deployed in those systems, making the alleged 5.6 percent increase a mathematical impossibility. *Id.* These inconsistencies made it impossible for the Cable Division to recalculate the questioned figures based on the operator's responses, using the best information available, as the Commission directed in Century New Mexico Cable Corp., 11 FCC Rcd. 17335, DA 96-2083, at ¶ 15 (1996). Therefore, the Cable Division acted reasonably in rejecting the filing.

In its appeal, Adelphia suggests that the Cable Division exceeded its discretion by rejecting the Form 1205 in toto. Appeal at 5. Although the Cable Division's primary concern was Adelphia's digital inventory, Adelphia had combined its addressable and digital converters and remote controls into single categories for the purpose of rate regulation and thus all the proposed equipment rates were rejected. Rate Order at 1, 6. The Cable Division directed Adelphia to refile its Form 1205 in toto, rather than approving all proposed rates except those

⁴ Massachusetts-only data showed 26,860 addressable remote controls and 11,804 addressable converters in inventory while New England data showed 8,761 addressable remote controls and 8,761 addressable converter in inventory.

for equipment, because if any Schedule B costs were associated with the inventory at issue, then Adelphia may be required to adjust its Schedule B costs as well.⁵ Thus, the Cable Division was reasonable in requesting the Company to refile its Form 1205 in compliance with the directives contained in the Rate Order.

C. Adelphia's methodology used in calculating equipment rates approved in the Rate Order must be upheld.

In its appeal, Adelphia indicates that if the Commission were to remand the order to the Cable Division, the Cable Division should be forced to "divide the number of deployed units, excluding the inventory units, by the total equipment cost."⁶ Appeal at 7, n. 5. In the Rate Order, the Cable Division rejected Adelphia's inventory costs, not Adelphia's methodology. Rate Order at 5. In its filing, Adelphia excluded its inventory of addressable units from the total units in service thus correctly following the Commission's rules. Instructions for FCC Form 1205, issued June 1996, at 13, Line D. By excluding the inventory units that represented "spare units for those in service," Adelphia was allowed to include the cost associated with "a reasonable number of spare customer equipment units that the operator keeps on-hand as replacements for broken equipment." Id. As conceded by Adelphia, the excess digital units Adelphia included in its filing do not comport with this definition of inventory. As stated by Adelphia, these units were purchased for future deployment. As the Cable Division determined in the Rate Order, the inclusion of the costs associated with these high-cost new units in the Form 1205 improperly skewed the per unit converter costs. To allow for the improper

⁵ For example, any non-capital costs associated with maintaining the not yet deployed units in inventory would be reported on Schedule B.

⁶ In addressing this issue, the Cable Division assumes that Adelphia inadvertently reversed the equation.

classification of these units as spare inventory would only further overstate the monthly lease rate in question. Since the Company's methodology, as approved by the Cable Division, complies with the Commission's rules, Adelphia's appeal must be denied.

CONCLUSION

For the foregoing reasons, the Cable Division respectfully requests that Adelphia's appeal be denied.

Respectfully Submitted,

/s/ Alicia C. Matthews
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CERTIFICATE OF SERVICE

I, Alicia C. Matthews, Director of the Cable Television Division, do hereby certify that on this 30th day of August, 2002, I caused the foregoing "Opposition of the Cable Television Division of the Massachusetts Department of Telecommunications and Energy to Adelphia Communications Corporation's Appeal of Local Rate Order" to be served via overnight mail on the following:

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