

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of
ADELPHIA COMMUNICATIONS CORP.
Appeal of Local Rate Order and Order Mandating
Compliance of the Massachusetts Department of
Telecommunications and Energy
CSB No. 0678

MEMORANDUM OPINION AND ORDER

Adopted: July 15, 2003

Released: July 16, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. On August 19, 2002, Adelphia Communications Corp. ("Adelphia") filed an appeal of a rate order and an enforcement order adopted by the Massachusetts Department of Telecommunications and Energy ("DTE").

II. BACKGROUND

2. The Communications Act provides that, where effective competition is absent, rates for basic cable service and associated equipment are subject to regulation by franchising authorities.

3. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.

1 The proceeding before the DTE from which Adelphia filed the present appeal is Docket No. CTV 01-4. Simultaneously with its appeal, Adelphia filed an Emergency Petition for Stay of Enforcement Pending Appeal of Rate Order ("Emergency Petition for Stay").

2 47 U.S.C. § 543(a)(2).

3 47 U.S.C. § 543(b)(1); 47 C.F.R. § 76.922.

4 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

5 Harron Commun. Corp., 15 FCC Rcd 7901 (2000) ¶ 2; Implementation of Sections of the Cable Television Consumer Protection & Competition Act, 8 FCC Rcd 5631 (1993), 9 FCC Rcd 4316, 4346 (1994) ¶ 81.

Commission's rules. 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.

III. DISCUSSION

4. This appeal concerns two Forms, 1205 and 1240, that Adelphia filed with the DTE. Form 1205 concerns the costs of and rates for regulated cable equipment and installation for the basic service tier ("BST"). Form 1240 concerns adjustments to rates for the BST of cable programming.⁶ Commission rules provide that, when the two forms are filed simultaneously, the local authority (here, the DTE) shall rule on proposed rates within 12 months of the filing. Absent a ruling by that deadline, no refunds may be ordered.⁷ If, however, a Form 1205 is filed separate and apart from a Form 1240, the 12-month rule does not apply to the review of the Form 1205.⁸

5. On August 18, 2000, Adelphia filed with the DTE a Form 1205 containing data for the year ending December 31, 1999 (the "1999 Form 1205").⁹ On December 29, 2000, Adelphia filed with the DTE a Form 1240. Simultaneously, it also filed a copy of the 1999 Form 1205 it had filed the previous August.¹⁰ The DTE issued a rate order after review of Adelphia's 1999 Form 1205 on March 12, 2001,¹¹ and another rate order after review of Adelphia's Form 1240 on August 1, 2001.¹²

6. On or about April 1, 2001, during the pendency of the review of its Form 1240, Adelphia filed another Form 1205, which contained data for the year ending December 31, 2000 (the "2000 Form 1205"). The DTE issued a Rate Order on the 2000 Form 1205 filing on July 18, 2002 (the "July 2002 Rate Order")¹³ and, on August 12, an Order Mandating Compliance with the July 2002 Rate Order.¹⁴ The July 2002 Rate Order, along with the Order Mandating Compliance, are the subjects of this appeal.

7. In the July 2002 Rate Order, the DTE rejected Adelphia's 2000 Form 1205, finding that Adelphia had failed to meet its burden of justifying its inventory. Specifically, the DTE found that the 2000 Form 1205 included an unreasonably large inventory of digital equipment. The DTE ordered Adelphia to re-file its 2000 Form 1205, removing the costs associated with the excess inventory.¹⁵

8. One issue between the parties may be characterized as procedural. Adelphia contends that its 2000 Form 1205 is an amendment to its 1999 Form 1205. If this contention is true, then the DTE

⁶ See Commission web page, <http://www.fcc.gov/mb/mbform.html> (visited June 24, 2003).

⁷ Under 47 C.F.R. § 76.933(g)(2), if the franchising authority fails to act within 12 months, it may not order a refund or reduction.

⁸ Extension of Time to File Form 1205 Pursuant to Sections 76.922, 76.923 of the Commission's Rules, 12 FCC Rcd 10193, 10194-95 (1996) ¶ 4 n.14.

⁹ Opposition of the Cable Television Division of the Massachusetts Department of Telecommunications and Energy to Adelphia Communications Corporation's Appeal of Local Rate Order ("Opposition"), filed by Adelphia on Sept. 3, 2002.

¹⁰ Opposition at 3.

¹¹ Rate Order in DTE Docket No. CTV 00-5, issued March 12, 2001, Exhibit D to Opposition at 1-9.

¹² Rate Order in DTE Docket No. CTV 00-11, issued Aug. 1, 2001, Exhibit E to Opposition.

¹³ Rate Order in Docket No. CTV 01-4, issued July 18, 2002, Exhibit A to Appeal of Local Rate Orders ("Appeal") filed by Adelphia on Aug. 19, 2002.

¹⁴ Order Mandating Compliance in Docket No. CTV 01-4, issued Aug. 12, 2002, Exhibit B to Appeal.

¹⁵ July 2002 Rate Order at 2-5.

was required (if it wished to order refunds) to rule on the Form within 12 months of its filing with Adelphia's Form 1240, that is, by the end of December 2001, which the DTE did not do.¹⁶ The DTE, on the contrary, contends that Adelphia's 2000 Form 1205 was a new filing, separate from its 1999 Form 1205, and one for which there was no deadline for the DTE's ruling.¹⁷

9. The second issue between the parties is substantive. Adelphia's 2000 Form 1205 showed, and sought higher rates to recover the costs of, a major purchase of digital equipment. This equipment appears not to have been mentioned in Adelphia's 1999 Form 1205. Moreover, the digital equipment was not "spares" to replace equipment in service. Rather, it was a major shipment of new, digital equipment that Adelphia planned to market to its subscribers as an expensive but more functional upgrade compared to the "addressable" equipment they had been leasing. Adelphia argues that the new equipment was "for meeting subscriber demand" and that therefore its costs were properly charged to its subscribers.¹⁸ The DTE argues, on the contrary, that Adelphia purchased digital equipment in numbers far greater than needed for either replacement or anticipated demand.¹⁹

10. A third issue between the parties concerns the remedy that the DTE imposed. The DTE ordered Adelphia "to re-file its FCC Form 1205, removing from the gross book value and accumulated depreciation totals the costs associated with the digital units purchased for deployment at a future date. Adelphia may include the costs of a reasonable number of spare digital units."²⁰ Adelphia objects to the DTE's complete rejection of its 2000 Form 1205 when DTE's only objection was to Adelphia's rates for its digital equipment. Adelphia implies that the DTE should have established a reasonable rate for the equipment.²¹

11. The Procedural Issue. The procedural issue is whether Adelphia's 2000 Form 1205 was, as it contends, a mere amendment to its 1999 Form 1205 or was, as the DTE contends, a new Form 1205. We conclude that Adelphia's 2000 Form 1205 was a new Form 1205. The 2000 Form 1205 did not merely correct or improve the 1999 Form 1205.²² Rather, it stated an inventory for a completely new year and a major purchase of new technology. The 2000 Form 1205 was fundamentally different from the 1999 Form 1205 and cannot be fairly characterized as a mere amendment to it. Accordingly, the 12 month provision for franchising authorities to rule on simultaneously filed Forms 1205 and 1240 did not apply to Adelphia's 2000 Form 1205. The DTE's ruling on it was timely and we reject Adelphia's procedural appeal of the July 2002 Rate Order.

12. The Substantive Issue. The substantive issue concerns the propriety of the inventory stated in Adelphia's 2000 Form 1205. In rate regulation proceedings, the cable operator, not the franchising authority, bears the burden of proof.²³ The determination of whether a cable operator should be allowed to recover the costs of allegedly excess inventory in its rates is an issue to be left to the discretion of the franchising authority, and we will not disturb the findings of a local franchising authority if there is a reasonable basis for its decision.²⁴ We find that there was a reasonable basis for the DTE to

¹⁶ Appeal at 2-5.

¹⁷ Opposition at 4-6.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 7.

²⁰ July 2002 Rate Order at 5.

²¹ Appeal at 5 & n.4.

²² Opposition at 4.

²³ See 47 C.F.R. § 76.937.

²⁴ *Crown Media, Inc.*, 10 F.C.C.R. 6626, 6629 (1995) ¶ 17.

conclude that Adelphia's attempted justification of the inventory stated in its 2000 Form 1205 was insufficient. Despite repeated opportunities, Adelphia could not show that the new digital equipment was needed either to replace existing digital equipment or to meet expected demand for new digital equipment. This gave the DTE a reasonable basis to conclude that Adelphia had failed to sustain its burden of proof that the inventory stated in its 2000 Form 1205 was reasonable.²⁵ The DTE's written decision stated that conclusion adequately.²⁶ Accordingly, we reject Adelphia's appeal on this issue.

13. The Remedy Issue. The DTE, in the July 2002 Rate Order, rejected Adelphia's 2000 Form 1205 and ordered it to re-file the form, using the words quoted in paragraph ten above. Adelphia complains that the DTE erred by rejecting its entire Form after finding fault with only one part of it. The DTE, Adelphia argues, should have used the information it had, or requested more, and then found what would have been a proper inventory and prescribed proper rates for converters.²⁷ The DTE answers that it did not prescribe rates because the way Adelphia maintained its records could require a thorough revision of all Adelphia's proposed rates for equipment.²⁸ Adelphia replies that the DTE misunderstands how its records were kept and that the DTE's justification for rejecting its Form is nowhere stated in its July 2002 Rate Order.²⁹

14. Although this issue is not free from doubt, we conclude that the DTE's decision was within the bounds of reason. We favor expeditious resolution of disputes about rates and we encourage franchise authorities to reduce existing rates prospectively to a reasonable level rather than awaiting submission of new rates by cable operators and determinations thereon. Avoiding the need for additional rate proceedings reduces administrative burdens on both the franchising authorities and the cable operators.³⁰ We have granted appeals from franchising authorities that have simply rejected proposed rates and not used the best available evidence to establish proper rates and give reasonable bases for them.³¹

15. The DTE did not merely reject Adelphia's 2002 Form 1205, however. It also directed Adelphia to remove "from the gross book value and accumulated depreciation totals the costs associated with the digital units purchased for deployment at a future date" and to re-file its 2000 Form 1205. It also stated that Adelphia might include the costs of a reasonable number of spare digital units, but "must also provide support for the digital inventory level selected."³² The latter point, the actual demand for the kind of equipment that Adelphia had purchased, was something on which the record was silent, and for the DTE to have found a precise demand would have been speculation.³³ In light of the deficiencies in

²⁵ *Warner Cable Commun., Inc.*, 11 FCC Rcd 9246, 9250 (1996) ¶ 9 (a cable operator may recover the cost of inventory or spare equipment for which it demonstrates demand).

²⁶ July 2002 Rate Order at 2-5. *Compare Crown Media, Inc.*, 10 F.C.C.R. 6626, 6629 (1995) ¶ 17, with *Falcon Community Ventures I*, 13 FCC Rcd 12503, 12505 (1998) ¶ 5 (the Commission will reverse and remand local rate orders that "summarily or vaguely reject a cable operator's proposed rate increase").

²⁷ Appeal at 5 & n.4 at 5-6.

²⁸ Opposition at 8-9.

²⁹ Reply to Opposition to Appeal of Local Rate Orders, filed by Adelphia on Sept. 11, 2002.

³⁰ *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992 – Rate Regulation*, 8 FCC Rcd 5631, 572 (1993) ¶ 137.

³¹ See, e.g., *Century New Mexico Cable Corp.*, 11 FCC Rcd 17335, 17342 (1996) ¶ 15.

³² July 2000 Rate Order at 5.

³³ If the DTE had attempted to prescribe an inventory level on the evidence before it, it would have run an unreasonable risk of making an erroneous or arbitrary prescription and being reversed by us. See *Falcon Telecable*, DA 99-2386 at ¶ 17 (1999); *Warner Cable Commun., Inc.*, 11 FCC Rcd 9246, 9251 (1996) ¶ 12.

Adelphia's original 2000 Form 1205 and showings to the DTE, we think that what the DTE did fell within the bounds of reasonableness.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that the Appeal filed by Adelphia Communications Corporation **IS DISMISSED**.

17. **IT IS FURTHER ORDERED** that the Emergency Petition for Stay of Enforcement Pending Appeal **IS DISMISSED**.

18. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules. 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton
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