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

In the Matter of	)	
	)	
PRIME COMMUNICATIONS-POTOMAC, LLC	)	
d/b/a CABLE TV ARLINGTON	)	File No. CSB-A-0640
	)	
Appeal of Local Rate Order of	)	
the County of Arlington, Virginia	)	
CUID VA0108	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2000 **Released: June 26, 2000**

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Prime Communications-Potomac, LLC d/b/a Cable TV Arlington ("CTA") the cable operator serving Arlington County, Virginia,[1] has filed an appeal of the local rate order issued by the County of Arlington, Virginia ("County") on August 17, 1999. The County filed an opposition to which CTA replied. The rate order at issue reduces equipment rates proposed on FCC Form 1205. This order grants CTA's appeal in part and remands the rate order to the County for further consideration.

II. BACKGROUND

2. Under the Commission's rules, rate orders issued by local franchising authorities may be appealed to the Commission.[2] In ruling on an appeal of a local rate order, the Commission will not conduct a *de novo* review, but will sustain the franchising authority's decision provided there is a reasonable basis

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[1] CTA's assets were transferred as of December 31, 1992. Public Resources Management Group, Inc., Review of Prime Communications Potomac, L.L.C. dba CATV Arlington's 1999 FCC Forms 1240 and 1205 Filed With Arlington County April 1, 1999 ("Consulting Report"), page 4, *found at* CTA Appeal of Local Rate Order ("CTA Appeal"), Attachment C. Assets were transferred from Arlington Cable Partners, L.P. to SBC Media Ventures, Inc., its sole remaining partner, on January 6, 1994. CTA Reply to Opposition to Appeal of Local Rate Order ("CTA Reply"), Attachment B (Assignment and Assumption of Franchise). The County approved the transfer to Prime Communications-Potomac, LLC, which filed the instant appeal, on June 20, 1998. Opposition of Arlington County, Virginia, to Prime Communications-Potomac's Appeal of Local Rate Order ("County Opposition"), Declaration of Gail M. Lucas in Support of Opposition of Arlington County, Virginia, to Appeal of Local Rate Order ("Lucas Declaration"), Attachment C at 1.

[2] 47 C.F.R. § 76.944.

for that decision, and will reverse a franchising authority's decision only if the franchising authority unreasonably applied the Commission's rules in its local rate order.[3] If the Commission reverses a franchising authority's decision, it will not substitute its own decision but will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission decision on appeal.[4]

3. An operator seeking to justify its existing or proposed rates for the basic service tier, equipment, or installation bears the burden of demonstrating that the rates conform with our rules.[5] In determining this, a franchising authority may direct the operator to provide supporting information.[6] After reviewing an operator's rate forms and any other additional information submitted, the franchising authority may approve the operator's rates or issue a written decision explaining why the operator's rates are not reasonable.[7] If the franchising authority determines that the operator's rates exceed the maximum permitted rate as determined by the Commission's rules, it may prescribe a rate different from the proposed rate or order refunds, provided that it explains why the operator's rate or rates are unreasonable and any prescribed rate is reasonable.

4. Section 76.923 of the Commission's rules and FCC Forms 393, Part III and 1205 establish standards for the regulation of equipment and installation charges based on actual cost for systems not subject to effective competition.[8] Operators are required to establish an equipment basket to which they assign the direct and appropriately allocated indirect costs of service installation, additional outlets, and leasing and repairing equipment, plus a reasonable profit.[9] The rate for each type of leased

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[3] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, 8 FCC Rcd 5631, 5731 (1993) (*"Rate Order"*); *See also Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Third Order on Reconsideration*, 9 FCC Rcd 4316, 4346 (1994) ("*Third Order on Reconsideration*").

[4] *Rate Order*, 8 FCC Rcd at 5732.

[5] 47 C.F.R. § 76.937(a).

[6] *See Rate Order* at 5718-19; *Third Order on Reconsideration*, 9 FCC Rcd at 4348.

[7] 47 C.F.R. § 76.936; *see Ultracom of Marple, Inc.*, 10 FCC Rcd 6640, 6641-42 (Cab.Serv.Bur. 1995).

[8] FCC Form 393 was used to compute equipment and installation charges when rate regulation first began but was replaced with Form 1205 in 1994 when the Commission revised the benchmark formula and required operators to recompute their initial regulated rates for programming services, including the amount of equipment costs to be unbundled from programming service rates. With FCC Form 1205, the Commission extended the application of grossed up taxes to Subchapter S corporations, partnerships and sole proprietorships. FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation, page 8 (June 1996) ("Form 1205 Instructions); *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*, 9 FCC Rcd 4527, 4607-08 (1994) ("*Cost Order*"). Operators who had unbundled equipment rates using Form 393 could use the same fiscal or test year data when redoing the unbundling calculation using FCC Forms 1200 and 1205 after May 14, 1994. FCC Form 1200 Setting Maximum Initial Permitted Rates for Regulated Cable Services Pursuant to Rules Adopted February 22, 1994, page 9 (May 1994) ("Form 1200 Instructions"). These operators were not required to revise equipment and installation rates at that time if their regulated equipment and installation rates computed on Form 393 had been in effect for less than a year. Form 1205 Instructions at 2.

[9] 47 C.F.R. § 76.923(c); *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*, 9 FCC Rcd 1164, 1190 (1993) ("*First Order on Reconsideration*"); *Rate Order*, 8

(continued…)

equipment is intended to recover maintenance and capital costs for the equipment. The capital costs entered in the formula are the return on investment grossed up for taxes plus the current rate for depreciation.[10] The investment in the formula on both forms is the gross book value for the particular type of equipment as of the date the operator closed its books for the time period covered by the form minus accumulated depreciation and deferred taxes. The Commission assumes that operators recover investment through depreciation, and the rate rules should not provide for recovery beyond the cost of the plant.[11] The rate form instructions generally require inclusion of historical costs rather than historically-based projected costs. Thus, rates for the upcoming rate year are based on the annual actual cost data for the operator's previous fiscal or test year instead of projected costs.[12]

III. DISCUSSION

5. CTA filed FCC Form 393 in November 1993 to set unbundled programming and equipment rates and filed FCC Form 1205 in August 1994 and an amended Form 1205 in December 1994.[13] In its 1993 and 1994 filings, CTA used cost information based on the fiscal year ended December 31, 1992.[14] Starting in 1995, CTA annually filed Form 1205 to amend its equipment rates based on costs as of December 31 of the preceding year.

6. CTA filed its 1999 Form 1205 with the County to justify its equipment and installation rates to be in effect starting July 1, 1999, based on its costs as of December 31, 1998,[15] the end of its most recent fiscal year. The County adopted a rate order setting lower maximum permitted rates for addressable and non-addressable converters and remotes than CTA had proposed.[16] This followed from the recommendations of its consultant and staff, who had questioned CTA's bases for the net book values and depreciation expenses for this equipment.[17] The County consultant's Consulting Report stated that addressable converters, non-addressable converters, and remotes carried on the operator's books on December 31, 1992 and added in 1993 had been fully depreciated before the 1998 fiscal year.[18] The Report therefore concluded that the book value of these assets on December 31, 1998 was $0 and no depreciation expenses for this equipment could be recovered in the 1999 rates.[19]

7. CTA objects to the County's treatment of its depreciation expenses, arguing that the County has misunderstood how CTA accounted for its depreciation and has impermissibly revisited past

(…continued from previous page)
FCC Rcd at 5810 para. 288.

[10] FCC Form 1205, Schedule C; Form 1205 Instructions at 13; FCC Form 393 at 27, 31(Schedule C), 33-34.

[11] *First Order on Reconsideration*, 9 FCC Rcd at 1198.

[12] *Third Order on Reconsideration*, 9 FCC Rcd at 4372 para. 157; *First Order on Reconsideration*, 9 FCC Rcd at 1200 para. 67. Under some circumstances, an operator may calculate its rates using a representative month.

[13] Consulting Report at 4.

[14] *Id*.

[15] *Id.* at 2, Appendix D at 1.

[16] CTA Appeal, Attachment A.

[17] *See* Consulting Report; CTA Appeal, Attachment B (Staff Report).

[18] Consulting Report at 4-5; *see id.*, Appendices K at 1, 2 and E at 2-3.

[19] Consulting Report at 5, Appendix E at 2-3 lines 78-79, 85-86, 92-93.

rates. Believing it still had depreciation to recover in its 1999 rates for the 1998 fiscal year, CTA argues that the County must have deviated from the standard "test year" protocol by disallowing the last year of its five year depreciation on equipment acquired in 1994.[20] CTA illustrates this by pointing to new remotes acquired in 1994. The County disagrees, arguing it may review past rate forms for consistency with the current filing, and its review showed that CTA has over-recovered for depreciation expenses claimed before 1994 and claimed again in succeeding years. Referring to non-addressable converters, the example developed in the Consulting Report at 4-5, the County argues that the operator's past rate forms and its supplemental information show depreciation for 1993 to be taken in CTA's rates that was not reflected in CTA's rate calculation and not explained.[21] According to the County, CTA's net book value for non-addressable converters transferred as of December 31, 1992 should be adjusted for depreciation taken in 1993. It uses the 1992 depreciation expense as the 1993 expense. The County states that this problem also exists with respect to remotes and addressable converters.[22] CTA replies that the County must have misunderstood that the system was transferred in early 1994, which started a new five-year depreciation period based on the December 31, 1993 book value of equipment and continuing through the 1998 fiscal year.[23] CTA argues that, even if the County is correct with respect to the historical treatment of depreciation expenses associated with non-addressable converters, the County cannot use this to justify disallowing depreciation expenses with addressable converters and remotes.

A. Depreciation Expense

8. In preparing its 1999 Form 1205, CTA relied on the depreciation information it used and filed with the County each year starting with its 1995 filing.[24] The information shows that CTA took a depreciation expense for fiscal year 1993 for remotes and addressable converters transferred as of December 31, 1992, and deducted this expense from its 1992 net book values to determine net book values for 1993. The 1992 net book values are those shown on its Form 393, Schedule C, Column E.[25] For equipment added in 1993, the information shows that CTA took a depreciation expense in 1993 using the half year convention and reflected this expense in the 1993 net book value. The system and assets were transferred on January 6, 1994, and CTA sought to recover the fiscal year 1993 combined net book value in even amounts in its rates over five years, from fiscal year 1994 through fiscal year 1998. The corresponding rate forms would be those filed in calendar years 1995 through 1999. The total projected depreciation recovery in rates equaled the combined net book value shown in CTA's depreciation information. The depreciation information shows that CTA treated the non-addressable converters transferred as of December 31, 1992 and added in 1993 in the same way, except that CTA's information

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[20] CTA Appeal at 2-3.

[21] County Opposition at 8-9.

[22] County Opposition at 9-10, citing Consulting Report at 4.

[23] CTA Reply at 2-3. CTA does not contend that the gross book value of these assets changed as a result of transfers, only the period for depreciating the assets. *See generally Cablevision of Boston, Inc.*, DA 00-950 para. 11, 2000 WL 502317 (F.C.C.) (Cab. Serv. Bur. released Apr. 28, 2000).

[24] CTA Reply at 4. CTA's depreciation information prepared on 3/30/99 was attached to CTA's 1999 Form 1205 as Schedule C support and also to the Consulting Report, Appendix K, pages 3-5. CTA's 1999 Form 1205 can be found at County Opposition, Lucas Declaration, Attachment A. CTA filed amended depreciation information dated 8/14/99, which can be found at CTA Reply, Attachment A.

[25] Form 393 is found at County Opposition, Lucas Declaration, Attachment B. The 1992 net book value shown on Form 393 for addressable converters is $632,565. The value shown on CTA's depreciation information is $632,567, a *de minimis* difference.

does not show any depreciation expense, accumulation of depreciation or adjustment to net book value in 1993. Until ruling on CTA's 1999 rate filing, the County had accepted this approach.[26]

9. The Consulting Report on CTA's 1999 rate filing calculated depreciation expense in a table attached as Appendix E.[27] Appendix E assumes that the remotes and addressable converters transferred as of December 31, 1992 and added in 1993 were depreciated over five years starting in fiscal year 1993, and overlooks the adjustment to CTA's recovery period starting with fiscal year 1994 upon which previously approved rates were premised. Thus, Appendix E shows the remotes and addressable converters in these categories were fully depreciated as of December 31, 1997, and no depreciation remained to be recovered in fiscal year 1998. Appendix E treated non-addressable converters transferred in 1992 and added in 1993 the same way. According to the Consulting Report at 5, the consultant's recommendations were based on the depreciation expense shown in Appendix E. As a result, the amount of depreciation CTA claimed for fiscal year 1998 on transferred assets and assets added in 1993 was eliminated from the consultant's recalculation of Form 1205.

10. We find that the treatment of CTA's adjusted recovery period was not reasonable. When approving previous rate proposals, the County did not object to CTA's adjusted recovery periods for remotes and converters transferred in 1992 and added in 1993.[28] This adjustment had the effect of reducing the annual depreciation expense to be recovered in rates and resulted in lower annual permitted rates to subscribers than rates based on a shorter recovery period, while allowing CTA to fully recover the same total investment over a longer time. Appendix E's reliance on an unadjusted recovery period denied CTA the opportunity to fully recover its investment. Neither the Consulting Report nor the rate order explains why this change was made.[29] The Commission intended when establishing rules for equipment pricing that the pricing would effectively allow recovery of the full cost of the equipment over the equipment life.[30]

11. We also find that the treatment of remotes and converters acquired in 1994 was not reasonable. For this equipment, the net plant and annualized depreciation expense in Appendix E does not follow from the amount of new investment and depreciable life shown in the Appendix, whether or not the

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[26] *See* CTA Reply at 4-5; Consulting Report, Appendix K at 2 n.8.

[27] Consulting Report, Appendix E at 2, Analysis of Plant & Depreciation of the 1999 FCC Form 1205.

[28] *See* CTA Reply at 4-5; Consulting Report, Appendix K at 2 n.8.

[29] *See Chillicothe Cablevision, Inc.*, 10 FCC Rcd 6055, 6057 para. 9 (Cab. Serv. Bur. 1995) ("written decision must demonstrate why the proposed rate is unreasonable and why the prescribed rate is reasonable"), citing *Rate Order*, 8 FCC Rcd at 5723.

The County argues in its Opposition at 9-10 that CTA's rate filings indicated that it originally transferred the assets as of December 31, 1992 but that filings for remotes and addressable converters claim that depreciation did not start until 1994. It appears from the record that CTA was transferred twice, once at the end of 1992 and again at the start of 1994. *See* Consulting Report at 4; CTA Reply, Attach. B. CTA's depreciation information for remotes and addressable converters shows that CTA took depreciation experienced in fiscal year 1993 into account in determining the fiscal year 1993 net book value to be further depreciated over five years, starting in fiscal year 1994. The amount of depreciation expense claimed for fiscal year 1993 was less than the amount claimed for the same equipment for fiscal year 1992; the annual expense claimed for fiscal year 1994 and later was less than the expense claimed for fiscal year 1993. This suggests that the recovery period was adjusted twice, as CTA claims in its Reply at 3. CTA's total depreciation recovery shown on its depreciation information for remotes and addressable converters equals the book values shown on the information.

[30] *First Order on Reconsideration*, 9 FCC Rcd at 1198-99.

half year convention is used. CTA's depreciation information shows $25,117 in new remotes added in Accounting Year 1994. Appendix E at 2 line 80 shows the same amount for remotes added in 1994 with a depreciable life of five years. One would expect from this table that the annualized depreciation expense would be $5023. Line 80 shows only $2512 in net plant as of December 31, 1997, the end of the fourth year, and allows only $2512 in the "Annualized Depreciation Expense" column for fiscal year 1998, the fifth year, rather than the expected $5023 that was claimed by CTA.[31] The anomaly may be due to the "Accumulated Depreciation" as of December 31, 1997, which is recorded on line 80 as $22,605, the amount of accumulated depreciation shown on CTA's depreciation information for the end of fiscal year 1998.[32] The same problem appears at lines 87 and 94 with respect to addressable and non-addressable converters added in 1994.

12. While the recommendations in the Consulting Report are based on Appendix E, the Consulting Report also attempts to demonstrate that CTA has over-recovered for depreciation on the remotes and converters transferred as of December 31, 1992. According to the Consulting Report at 4-5, the consultant assumed that CTA incurred the depreciation it claimed in its rates, so the consultant subtracted the amount of depreciation CTA recovered in 1993 rates from the 1992 net book value shown on CTA's Form 393 to determine the 1993 net book value. The consultant again assumed that CTA incurred depreciation expense at the rate amount during 1994 and deducted the 1992 depreciation expense a second time to arrive at the 1994 net book value.[33] Using this analysis, which is based on Appendix K at 1, 2, it determined that CTA had over-recovered for depreciation on these transferred assets. However, equipment rates proposed in a rate form are set to recover actual costs from the previous fiscal or accounting year, and do not include cost projections.[34] The depreciation expense experienced in one fiscal year is taken on the books in the same year but recovered the following year in rates. CTA's 1992 depreciation expense is reflected in the 1992 net book value shown on CTA's Form 393, and is recovered in rates in the next rate year, but is not necessarily the actual depreciation expense experienced in fiscal year 1993. The actual expense experienced in fiscal year 1993 should be used to determine the net book value at the end of 1993. The actual expense experienced in fiscal year 1994 should be used to determine the net book value at the end of 1994.

13. Confusion in determining depreciation expense may be due to CTA's use of the same 1992 data in both its Form 393 and its first Form 1205. To facilitate the transition to programming service rates using the revised benchmark methodology, the Commission required operators to unbundle equipment costs from program revenues by filing Forms 1205 and 1200 together, even if they had computed unbundled rates on Form 393. Operators like CTA that had previously unbundled equipment costs using Form 393 could use the same fiscal year when redoing the calculation rather than data from the most recent fiscal year. In addition, the timing of the recalculation need not have coincided with the Form 1205 instructions that equipment rates be changed no more than annually and should be filed within 60 days of the end of a

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[31] If the half-year convention had been used, one-half of the annual depreciation would have been taken in the first year, leaving one-half to be recovered in the sixth year.

[32] CTA's number reflects use of the half-year convention. The Consulting Report at 5 states that the consultant annualizes depreciation, including a full year of depreciation for new equipment in the year added.

[33] The County Opposition at 8 argues that the 1992 depreciation expense is also the 1993 depreciation expense, based on CTA's Form 393 and attachments to its Form 1205. It does not argue that this amount is also the 1994 expense.

[34] *Third Order on Reconsideration*, 9 FCC Rcd at 4372 para. 157; *First Order on Reconsideration*, 9 FCC Rcd at 1200 para. 67.

fiscal year and before implementation.[35] Because of these timing requirements and to limit administrative expenses for the operator and confusion for the subscriber from frequent rate changes, an operator could keep its initial equipment rates in effect until after the close of its next fiscal year. [36] In CTA's case, this meant that its Form 1205 filed in 1994 used fiscal year 1992 data, not data from its 1993 fiscal year, and its rates computed from Form 393 continued in effect until it changed rates pursuant to the Form 1205 filed in 1995, using data as of the end of fiscal year 1994, even though its costs may have changed in the intervening time. Thus, its rates may not have been adjusted until its 1995 rate change for any fiscal year 1993 change in the depreciation for the equipment transferred in 1992. But, the rates during the same period also would not reflect additional depreciation for equipment added in 1993, the higher return on investment to which CTA may have been entitled because of the grossed up tax treatment permitted with Form 1205, or any other cost changes CTA might have experienced during fiscal year 1993.[37]

14. The Commission's rules and instructions to Form 1205 do not provide a mechanism for truing up depreciation where regulated equipment rates continued in effect for more than a year to facilitate this transition.[38] The Consulting Report appears to have tried to address this by using the 1992 depreciation expense on CTA's Form 393 and first Form 1205 as the expense for 1993 and even 1994. Rate forms and company financial records for the same fiscal year normally should be consistent, and franchising authorities should be able to rely on an operator's rate forms when reviewing depreciation costs. However, when a fiscal year is not covered by a rate form, depreciation expenses attributed to that fiscal year should be based on financial information from company records,[39] if the information is available and not otherwise disputed. The information on CTA's Form 393 and its first Form 1205 does not establish the

[35] FCC Form 1200 Instructions at 2; FCC Form 1205 Instructions at 1-2. When providing operators with the option to seek program service rate adjustments using the annual adjustment method, the Commission required that operators using this method file Form 1205 on the same date they file for program service rate adjustments using Form 1240. Operators using the quarterly rate adjustment method must continue to File Form 1205 within 60 days of the end of the fiscal year. 47 C.F.R. §§ 76.922(e)(1), 76.923(n).

[36] *Century New Mexico Cable Corp.*, 11 FCC Rcd 17335, 17350-51 (Cab. Serv. Bur. 1996); *TCI Cablevision of Oregon, Inc.*, DA 95-2269 paras. 15-19, 1995 WL 683989 (F.C.C.) (Cab. Serv. Bur. released Nov. 11, 1995) (Multnomah & Portland, OR). Indeed, the Form 1205 Instructions at 3, 14 provide that an operator need not complete the worksheet for computing rates or the information about average installation hours when submitting Form 1205 solely for establishing initial maximum permitted rates for programming services. *TCI Cablevision* at para. 18.

[37] *See id*. at n.36 ("We realize that this finding will enable operators who are charging more for equipment than is justified by their Form 1205 costs, to receive in excess of their maximum permitted revenues for some period of time. However, the Form 1205 instructions and this ruling apply to "changes" in equipment rates and therefore other operators who are charging less than their permitted rates under their initial Form 1205 filing will earn less than their maximum permitted revenues for a similar period of time"); *Falcon Cablevision*, 11 FCC Rcd 10511, 10522 n.47 (Cab. Serv. Bur. 1996) (Thousand Oaks, CA) (same).

[38] Because an operator is required to file Form 1205 within 60 days after the end of its fiscal year if using the quarterly method for adjusting programming service rates, when filing its Form 1240 if using the annual adjustment method, or on the anniversary date of its last Form 1205 filing if it elects not to file a Form 1240, this should not be a recurring problem, although a Form 1205 filing could be delayed if an operator changes rate adjustment methods. *See* 47 C.F.R. § 76.923(n).

[39] *See* Form 1205 Instructions at 3. The General Instructions provide that the form should be completed "using financial data from the company's general ledger and subsidiary records maintained in accordance with generally accepted accounting principles."

unreasonableness of CTA's claimed depreciation expenses after fiscal year 1992.[40] The Consulting Report's reliance on those forms to establish depreciation expense for years not covered by the data in the forms is not reasonable in this case, and the analysis based on Appendix K does not support the rate recommendations accepted by the County.

15. With respect to non-addressable converters, the County argues that depreciation information attached to CTA's Form 1205 (presumably the form filed in 1999) shows that CTA claimed $108,249 in depreciation in 1993, the figure also appearing on its Form 393, but failed to reflect this in its rates, so that CTA's proposed rates in its 1999 Form 1205 would result in an over-recovery of $108,249.[41] CTA states that this $108,249 depreciation expense was recognized in the calculation of the year-end 1993 net book value.[42] We find that CTA's depreciation information does not support the depreciation expense claimed on its 1999 Form 1205 for non-addressable converters transferred as of December 31, 1992 or added in 1993. CTA's depreciation information for these converters does not show any fiscal year 1993 depreciation for assets transferred as of December 31, 1992 or added in 1993, even though CTA was charging regulated rates during and after this period and the lack of a filing using fiscal year 1993 data does not toll the accumulation of depreciation. CTA showed depreciation expense for other equipment for this period and should have treated all of the equipment consistently under generally accepted accounting principles. CTA argues that the appropriate net book value is that shown for 1993,[43] but the value for the transferred assets in 1993 is the same as the net book value for 1992 shown on its depreciation information and its Form 393, and no depreciation expense is shown or accumulated in 1993. The net book value carried for assets added in 1993 is unchanged from the value of the assets when added, and no depreciation expense is shown or accumulated in 1993, even though under generally acceptable accounting principles depreciation usually starts when the assets are added and CTA depreciated other assets added in 1993. CTA took the combined values it showed as 1993 net book values and depreciated this amount over five years, from fiscal year 1994 through fiscal year 1998.[44] While it is possible that no depreciation remains to be recovered because of this error, the analysis upon which the County relied does not establish this and must be revisited.

B. Review of Past Rate Filings

16. CTA also argues that the County Rate Order is inconsistent with the intent of the *Thirteenth Order on Reconsideration* and with achieving finality to equipment rate rulings.[45] The

[40] *See Chillicothe Cablevision,*10 FCC Rcd at 6057 para. 9; *Rate Order*, 8 FCC Rcd at 5723.

[41] County Opposition at 8-9.

[42] CTA Reply at 2.

[43] *Id*.

[44] The treatment of depreciation in CTA's rates is the same in both sets of depreciation information CTA provided to the County, even though the entry of $108,249 as "Depreciation Taken for Rates" for the transferred assets is placed in the "Accounting Year" 1993 column in the 3/30/99 information but moved to the "Test Year" 1992 column in the 8/14/99 information. We understand the terms "Test" and "Accounting" year to have the same meaning. The County appears to rely on CTA's earlier information in arguing that CTA claimed $108,249 in depreciation expense in 1993. *See* County Opposition at 8. We note that the 8/14/99 information bears the same date as the County Board meeting approving the rate order.

[45] CTA Appeal at 3-4, citing *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration*, 11 FCC Rcd 388, 426 para. 92 (1995).

Thirteenth Order added section 76.933(g)(2) to the Commission's rules when the annual rate adjustment methodology was adopted.[46] This gives franchising authorities a limited period in which to act on a rate filing made pursuant to the annual adjustment method. If the franchising authority has not acted within 12 months from the date the operator files a rate form, it may not later order a refund or a prospective rate reduction with respect to the rate filing. The Commission explained in the *Thirteenth Order* that this time constraint should provide ample time for review, while giving operators certainty with respect to their liability for refunds and whether their rates will be permitted to remain in effect. The County disagrees with CTA, explaining it did not engage in retroactive ratemaking by ordering CTA to revise past rates or issue refunds.[47] It argues that it addressed an unexplained inconsistency in the current filing and compared past and present filings. CTA sees the County's review as a recalculation of the depreciation expenses taken prior to 1994 and argues the County cannot revisit components of previously established rates, nor prohibit the establishment of current rates based on those previously established rates.[48]

17. A franchising authority may review the bases for the figures presented in an operator's rate forms and may seek substantiation of the figures.[49] In this case, the County reviewed the depreciation expense claimed in CTA's 1999 Form 1205 and supporting data and looked at CTA's treatment of depreciation expense in earlier filings to resolve what it believed to be an unexplained discrepency. The County did not recalculate earlier rates, order any adjustment to earlier rates, or require refunds based on what it perceived to be past over-recovery of depreciation expense. Based on its view that CTA had fully depreciated some equipment, the County disallowed further recovery in the new rates. While we find that the analysis underlying the County rate order is not reasonable, we find nothing in Section 76.933(g)(2) or the *Thirteenth Order on Reconsideration* insulating an operator's current rate form from scrutiny on the basis of that operator's past rate filings or the supporting data submitted with the current filing. Nor does the cited precedent prevent a franchising authority from addressing a discrepancy in an operator's current rate filing or correcting for mistakes in the operator's substantiating information that affect the proposed rates and result in proposed equipment charges in excess of actual costs, even if the mistakes were also made in or derive from earlier rate filings.[50]

IV. CONCLUSION

18. For the reasons discussed above, the analysis of CTA's depreciation expenses relied on by the County does not support the conclusion underlying the rate order that CTA had fully recovered the depreciation for remotes and converters transferred as of December 31, 1992 or added in 1993. Nor does it support the treatment of equipment added in 1994. Appendix E to the Consulting Report, said to be the basis for the Consulting Report recommendations adopted by the County, does not take into account the depreciation recovery period used by CTA and accepted in previous County rate reviews for equipment transferred as of December 31, 1992 and added in 1993. It does not explain why this period is no longer reasonable and why the shorter period is reasonable. Appendix E also appears to have miscalculated the

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[46] 47 C.F.R. § 76.933(g)(2).

[47] County Opposition at 11-12.

[48] CTA Reply at 4-5.

[49] *See Marcus Cable Partners, LLC*, 14 FCC Rcd 11,663, 11,664 para. 4 (Cab. Serv. Bur. 1999) and cases cited therein at n.15.

[50] *See* 47 U.S.C. § 543(b)(3); 47 C.F.R. § 76.923(a)(2) ("Subscriber charges for such equipment shall not exceed charges based on actual costs . . . ."). *See generally Western Reserve Cablevision, Inc.*, 14 FCC Rcd 13,391, 13,397 para. 11 (Cab. Serv. Bur. 1999).

depreciation on equipment added in 1994. The analysis based on Appendix K reflects confusion about what depreciation expenses were recovered in CTA's 1993 rates and what expenses should be attributed to fiscal years 1993 and 1994 and fails to explain why the depreciation CTA claimed for remotes and addressable converters in 1993 is not reasonable. Therefore, that analysis does not independently support the rate order. The County rate order is not reasonable and is being remanded for further review of CTA's depreciation expenses for remotes and converters consistent with this Memorandum Opinion and Order.

V. ORDERING CLAUSES

19. ACCORDINGLY, IT IS ORDERED that the Appeal of Local Rate Order filed by Prime Communications-Potomac, LLC d/b/a Cable TV Arlington on September 13, 1999 IS GRANTED to the extent indicated herein and the local rate order issued by Arlington County, Virginia on August 17, 1999 IS REMANDED for further consideration consistent with this Memorandum Opinion and Order.

20. IT IS FURTHER ORDERED that Arlington County, Virginia shall not enforce matters remanded for further consideration pending further action by the County on those matters.

21. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau