

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

In the Matter of)	
)	
Comcast Cablevision of Dallas, Inc.)	
Tolling Order Regarding Form 1240)	File No. CSB-A-0711
Farmers Branch TX (TX0624))	
)	
Comcast of California/Colorado/Illinois/Indiana/)	
Texas, Inc.)	File No. CSB-A-0712
Tolling Order)	
McKinney TX (TX0641))	

ORDER

Adopted: September 20, 2005

Released: September 21, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. On April 8, 2004, Comcast Cablevision of Dallas, Inc. (“Comcast of Farmers Branch”), filed an appeal of a rate order adopted by the City of Farmers Branch, Texas (the “City of Farmers Branch”).¹ The City of Farmers Branch filed an opposition on April 27, 2004,² to which Comcast of Farmers Branch filed no reply. Comcast of Farmers Branch’s appeal concerns the grounds on which the City tolled the Form 1240 that the company had filed in March 2004 to set rates for the Basic Service Tier (“BST”) of its cable service there.

2. On April 26, 2004, Comcast of California/Colorado/Illinois/Indiana/Texas, Inc. (“Comcast of McKinney”),³ filed an appeal of a rate order adopted by the City of McKinney, Texas (the

¹ Appeal of Local Rate Order (“Comcast of Farmers Branch Appeal”), filed April 8, 2004. The rate order is a letter from Matthew C.G. Boyle, Esq., Boyle & Lowry, L.L.P., counsel for the City of Farmers Branch, to Mr. Craig A. Schmid, Senior Director of Regulatory Affairs for the Atlantic Division, Comcast Cable Communications, Inc., dated March 9, 2004 (“Farmers Branch Tolling Letter”). The Farmers Branch Tolling Letter is Attachment A to the Comcast of Farmers Branch Appeal.

² City of Farmers Branch’s Response to Comcast Cablevision of Dallas, Inc.’s Appeal of Local Rate Order, filed April 27, 2004.

³ Both Comcast of Flower Mound and Comcast of McKinney may be referred to as “the Comcast Companies.”

“City of McKinney”).⁴ The City of McKinney filed an opposition dated May 10, 2004,⁵ to which Comcast of McKinney filed a reply on May 20.⁶ Comcast of McKinney’s appeal concerns the same asserted grounds for tolling a Form 1240 as the appeal of Comcast of Farmers Branch. The McKinney appeal also concerns the Form 1205 that Comcast of McKinney filed in March 2004 to set rates for regulated equipment and installation related to the BST, and the effective date of the rates covered by that Form 1205.

3. In both appeals, the material facts about the Form 1240s are virtually identical and the legal issues are identical. Accordingly, in the interests of administrative efficiency, we are deciding both appeals in this one Order.⁷ In brief, on the merits we conclude that each City acted rationally and with a reasonable basis in tolling its consideration of the Form 1240s, and that the City of McKinney did so in its consideration of Comcast of McKinney’s Form 1205. We grant Comcast of McKinney’s appeal, however, from the City of McKinney’s statement of the effective date for the rates stated in the company’s Form 1205.

II. BACKGROUND

4. The Communications Act of 1934, as amended,⁸ provides that, where effective competition is absent, rates for the BST and associated equipment are subject to regulation by franchising authorities.⁹ Rates for the BST and equipment should not exceed rates that would be charged by systems facing effective competition, as determined in accordance with Commission regulations for setting rates.¹⁰ If the cable operator fails to meet its burden of proof, has improperly calculated its rates, or is unresponsive to requests for relevant information, the franchising authority may use the “best information available” to review the operator’s proposed rates and, if appropriate, adjust them and order refunds.¹¹

⁴ Appeal of Local Rate Order (“Comcast of McKinney Appeal”), filed April 26, 2004. The Rate Order is a letter from Mr. Larry Robinson, City Manager of McKinney, Texas, to Mr. Craig A. Schmid, Senior Director of Regulatory Affairs for the Atlantic Division, Comcast Cable Communications, Inc., dated March 25, 2004 (“McKinney Tolling Letter”). The McKinney Tolling Letter is Attachment A to the Comcast of McKinney Appeal.

The City of Farmers Branch and the City of McKinney may be referred to as “the Cities.”

⁵ City of McKinney’s Response to Comcast of California/Colorado/Illinois/Indiana/Texas, Inc.’s Appeal of Tolling Order (“City of McKinney Response”), dated May 10, 2004.

⁶ Reply to Opposition to Appeal of Local Rate Order (“Comcast of McKinney Reply”), filed May 20, 2004.

⁷ *Comcast Cablevision of Dallas, Inc.*, 19 FCC Rcd 10628, 10630 ¶ 2, *on reconsideration*, 19 FCC Rcd 22687 (2004); *Frontiervision Operating Partners*, 18 FCC Rcd 20416, 20417 (2003) ¶ 3, *application for review denied*, 19 FCC Rcd 23096 (2004), *appeal pending on other grounds sub nom. City of Winchester et al. v. FCC*, Case No. 05-3083 (6th Cir., filed Jan. 13, 2005).

⁸ 47 U.S.C. §§ 151 *et seq.*

⁹ 47 U.S.C. § 543(a)(2).

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

¹¹ 47 C.F.R. § 76.937(d); *Falcon Classic Cable*, 15 FCC Rcd 5717, 5720 (2000) ¶ 10; *Western Reserve Cablevision, Inc.*, 14 FCC Rcd 13391, 13398 (1999) ¶ 12.

5. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.¹² 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 a rational basis for that decision exists.¹³ The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the 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

A. Form 1240

6. Form 1240 is a form on which a cable operator submits data to its franchising authority. Based on that Form, the franchising authority sets the rates for the cable operator's BST. Line I9 on Form 1240 calls for the cable operator to fill in a box marked "Maximum Permitted Rate [MPR] for Projected Period."¹⁴ Line I10 calls for the cable operator to fill in a box marked "Operator Selected Rate [OSR] for Projected Period."¹⁵ Two previous cable rate appeals have concerned how cable operators fill in their Form 1240s.¹⁶ The cable operators in both those cases filled in Line I9, specifying an MPR, but left Line I10 blank, not specifying an OSR. Each cable operator, later, wanted to raise its pre-existing rate. In our decisions, we ruled that each franchising authority could have found the Form 1240 "facially incomplete" because it lacked all the information required on it and could have demanded that the cable operator fill in Line I10 and specify an OSR.¹⁷ Under our rules, incomplete rate forms toll the review process if the franchising authority is unable to proceed with its review.¹⁸ In neither case, however, did the franchising authority do so. Instead, each franchising authority took actions that, we decided, did not toll the review process and did not prohibit the cable operator from later raising its BST.¹⁹

7. Each Comcast Company in the present appeals, on the Form 1240 that it submitted to its City in March 2004, filled in Line I9, stating a specific sum of money as its MPR, and filled in Line I10,

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

¹³ *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.

¹⁴ *See, e.g.*, Comcast of McKinney Appeal, Attachment B (Form 1240 filed by Comcast of McKinney on March 1, 2004) at 4.

¹⁵ *Id.*

¹⁶ *Comcast Cable Communications, Inc.*, 19 FCC Rcd 6 (2004); *Frontiervision Operating Partners*, 18 FCC Rcd 20416 (2003), *application for review denied*, 19 FCC Rcd 23096 (2004).

¹⁷ *Comcast Cable Communications, Inc.*, 19 FCC Rcd at 10-12 ¶¶ 14-18; *Frontiervision Operating Partners*, 18 FCC Rcd at 20421 ¶ 15, *application for review denied*, 19 FCC Rcd at 23097-98 (2004) ¶ 6, citing *TCI Cablevision of Dallas, Inc.*, 15 FCC Rcd 7379, 7381 (2000) ¶ 8 & *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, 11 FCC Rcd 388, 427 (1995) ¶ 95.

¹⁸ 47 C.F.R. § 76.933(g).

¹⁹ *Comcast Cable Communications, Inc.*, 19 FCC Rcd at 11-12 ¶¶ 15-18; *Frontiervision Operating Partners*, 18 FCC Rcd at 20421-22 ¶¶ 14-16.

stating the same specific sum as its OSR.²⁰ In correspondence accompanying each Form 1240, however, Comcast disavowed any intention of actually charging the sum it filled in and specified as its OSR. Specifically, the letter covering each Form 1240 stated “[e]ven though we have not yet determined the rate we intend to charge for the Basic Service Tier effective with our next scheduled rate adjustment, we have entered the maximum permitted rate from Line I9 on Line I10. Please be advised that it is not our intention at this time to charge the maximum permitted rate.”²¹

8. The Cities issued Tolling Letters, finding the Comcast Companies’ Form 1240s to be facially incomplete for failing to include OSRs and tolling further consideration of them. The Tolling Letters faulted each company for “subterfuge” and suggested that the Companies amend them by including OSRs.²² The Comcast Companies then filed the present appeals.

9. Line I10 of Form 1240 plainly calls for the cable operator to state an OSR. Each Comcast Company filled in a sum of money on that Line, but its own simultaneous statements declared clearly that the sum was not, in truth, the rate it had selected to charge. In any realistic sense, the Comcast Companies’ Form 1240s did not specify an OSR and were facially incomplete. The Cities’ Tolling Letters followed the advice of our two recent decisions. They acted rationally and with a reasonable basis.

10. The Comcast Companies complain that Form 1240 was adopted by the Commission approximately nine years ago and that the original purpose of an OSR is “far from clear.”²³ That complaint, however, is better advanced in a rulemaking or other forum for revising Form 1240. The Comcast Companies rely on our decision in *TCI Cablevision of Dallas*, but that decision is inapposite. In *TCI Cablevision of Dallas*, a franchising authority ruled that a Form 1240 was facially incomplete and tolled consideration of it. The franchising authority did so not because the Form 1240 was missing rates or other required data, but because the authority and the cable operator disagreed about the specific name of the entity that should be filing the Form. In staying the franchising authority’s ruling, we cautioned that “tolling review when Form 1240 is facially incomplete is not intended as a device for halting the review process until a cable operator concedes a substantive point.”²⁴ The Cities’ treatment of the Comcast Companies’ Form 1240s in the present case, however, does not exceed the proper reach of our tolling procedure. The Cities tolled their review simply to evoke the honest, accurate, and complete rate

²⁰ These were \$12.80 in Farmers Branch and \$13.07 in McKinney. Comcast of Farmers Branch Appeal, Attachment B (Form 1240 filed by Comcast of Farmers Branch on March 1, 2004) at 4; Comcast of McKinney Appeal, Attachment B (Form 1240 filed by Comcast of McKinney on March 1, 2004) at 4.

²¹ Comcast of Farmers Branch Appeal, Attachment B (Letter from Mr. Craig A. Schmid to Ms. Margaret Somereve, Assistant to the City Manager, City of Farmers Branch, Texas, dated March 1, 2004); Comcast of McKinney Appeal, Attachment B (Letter from Mr. Craig A. Schmid to Mr. Larry Robinson, City Manager, City of McKinney, Texas, dated March 1, 2004). Each letter goes on to state that “The enclosed FCC forms are not intended to serve as notice for any price adjustments of the basic service tier, Appropriate notice will be sent to you prior to any adjustments in the basic service tier”

²² Farmers Branch Tolling Letter, *supra* note 1, at 1 (“a clear attempt at subterfuge”); McKinney Tolling Letter, *supra* note 4, at 1 (“what appears to be an attempt at subterfuge”).

²³ See, e.g., Comcast of McKinney Appeal at 2-3.

²⁴ *TCI Cablevision of Dallas, Inc.*, 15 FCC Rcd at 7381-82 ¶ 8; Comcast of Farmers Branch Appeal at 6 & n.6; Comcast of McKinney Appeal at 6-7 & n.9.

data that the Form requires.²⁵ We cannot conclude that the Cities' decisions to toll the Comcast Companies' Form 1240s lack a rational basis. Accordingly, we dismiss the appeals of the Comcast Companies on this issue.

B. Form 1205

11. Form 1205 is a form on which a cable operator submits data about its equipment and labor costs to its franchising authority. Based on Form 1205, the cable operator's equipment and installation rates are set for a one-year period. Form 1205 requires the cable operator to state "permitted" rates, a concept like the MPRs required by Form 1240.²⁶ Form 1205 also requires the cable operator to state its "actual" rates.²⁷

12. Form 1205 was created to deal with both the unbundling of initial equipment and installation rates as well as the subsequent revision of those rates. At the initial stage of cable rate regulation, Form 1205 directed cable operators to separate, or "unbundle," the costs of equipment and installations in the calculations of initial rates for regulated cable services. Once initial rates were established, however, the principal purpose of Form 1205 became one of calculating the operators' proposed rates for the one-year period covered by the Form.²⁸ At this later stage of rate regulation, the rates that are material in the franchising authority's review of an operator's rates are the rates that the operator actually proposes to charge during that period. The existing rates that have been in effect are not material to that review.

13. Comcast of McKinney, in responding to the requirement in the Summary Schedule in Form 1205 that the operator insert its actual rates, along with its maximum permitted rates, simply referred the City to a recent rate card, a copy of which it attached to its Form 1205.²⁹ In correspondence accompanying the Form 1205, however, Comcast of McKinney indicated some uncertainty about what its actual rates would be for equipment and installations during the period under review. It stated that "[w]e will implement specific equipment and installation prices that are lower than the maximum permitted rates calculated on FCC Form 1205."³⁰

²⁵ See also *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation ("Thirteenth Order on Reconsideration")*, 11 FCC Rcd 388, 427 (1995) ¶ 95 (adopting annual filing procedures and describing facially incomplete filings as "those filings which do not have all the information required by the form.").

²⁶ Comcast of McKinney Appeal, Attachment C (Form 1205 filed by Comcast of McKinney on March 1, 2004) at 7, 10.

²⁷ *Id.* at 7, 10.

²⁸ See, e.g., *Cablevision of Boston, Inc.*, 15 FCC Rcd 10334, 10337 (2000) ¶ 11 ("FCC Form 1205 is used to establish the amount of equipment costs to be unbundled in setting initial regulated BST rates and periodically thereafter to revise equipment rates based on the operator's costs."); *Thirteenth Order on Reconsideration*, 11 FCC Rcd at 403-04 ¶ 35 ("Cable operators must complete and file with the franchising authority an FCC Form 1205 for several different purposes. First, they must file Form 1205 with the franchising authority for the purpose of setting initial rates Second, all operators must file Form 1205 with their franchising authorities once every year within 60 days of the end their fiscal year.") (footnote omitted).

²⁹ Comcast of McKinney Appeal, Attachment C, *supra* note 26, at 7, 10.

³⁰ *Id.*, Attachment B, *supra* note 21, at 1.

14. The City of McKinney found Comcast of McKinney's Form 1205 to be facially incomplete for failing to include the rates that the company would actually charge for installation and equipment in the period covered by the Form. The City tolled its consideration of the Form 1205 and suggested that the Company amend it to include such rates.³¹ Comcast of McKinney appeals from that finding.

15. We find a rational basis to support the City's conclusion that Comcast of McKinney's Form 1205 was facially incomplete. Comcast of McKinney interpreted the Form 1205 to permit insertion of its current rates, not the actual rates the operator proposed to charge during the one-year period. If Comcast of McKinney planned to charge different rates in the period covered by the Form 1205, the rates published in a recent rate card were immaterial. The rates that were material were those that Comcast of McKinney actually proposed to charge for equipment and installation during the review period.³² As with the Comcast Companies' Form 1240s, the City of McKinney tolled its review of Comcast of McKinney's Form 1205 simply to evoke honest, accurate, and complete rate data relevant to the review period. The City of McKinney acted reasonably in requiring such data. Accordingly, we deny the appeal of the Comcast of McKinney on this issue.

C. Effective Date of Comcast of McKinney's Form 1205

16. Comcast of McKinney's previous Form 1205 was intended to take effect on June 1, 2003.³³ After reviewing it, the City of McKinney released a rate order on December 16, 2003.³⁴ The rate order stated that "[t]he effective date for the rates for the 2003-2004 period is December 1, 2003."³⁵ Comcast of McKinney appealed parts of that rate order, but not its effective date.³⁶

17. Comcast of McKinney filed its next Form 1205 – the one involved in the present appeal – with the City of McKinney on March 1, 2004. Comcast of McKinney stated that its adjusted rates would become effective on June 1, 2004.³⁷ In the decision here under review, the City of McKinney ruled that the adjusted rates could not go into effect until December 1, 2004, at the earliest, because "[t]he City

³¹ McKinney Tolling Letter, *supra* note 4, at 1-2.

³² The record discloses that Comcast of McKinney's previous owner had inserted its proposed rates on its previous Form 1205. City of McKinney Response at 3, 6.

³³ Comcast of California/Colorado/Illinois/Indiana/Texas, Inc., CSB-A-0700, Appeal of Local Rate Order, Attachment E (Letter from Ms. Robbin Pepper, Manager of Rates, Mountain Division, Comcast Cable Communications Inc., to Ms. Debra Wallace, Assistant Finance Director, City of McKinney, dated Dec. 18, 2003) at 3); *cf.* Attachment F (Letter from C2 Consulting Services, Inc., to Ms. Wallace & Ms. Shelli Seimer, Assistant to the City Manager, City of Allen TX, dated May 5, 2003) at 1.

³⁴ Appeals from this rate order and several others were resolved by us in *Comcast Cablevision of Dallas, Inc.*, *supra* note 7.

³⁵ City of McKinney Response, Attachment F (City of McKinney, Texas, Ordinance No. 2003-12-116), § 2.3 at 2.

³⁶ See *Comcast Cablevision of Dallas, Inc.*, 19 FCC Rcd 10628, *on reconsideration*, 19 FCC Rcd 22687 (2004).

³⁷ Comcast of McKinney Appeal, Attachment B, *supra* note 21, at 1.

cannot sanction rate amendments more often than once per each twelve-month period.”³⁸ Comcast of McKinney appeals from this ruling.

18. The City of McKinney misapplies our rule, which generally bars cable operators, by their own actions, from changing rates more than once a year.³⁹ Our rule does not authorize a franchising authority to delay an operator’s rate change by the operation of its review.⁴⁰ In this case, Comcast of McKinney filed its Form 1205 with an intended effective date of June 1, 2004. Regardless of the length of the City’s review of that filing, that date continues to serve as the one-year anniversary date for Comcast of McKinney’s rate changes unless it proposes a new date beyond the 12-month anniversary. Accordingly, we grant the appeal of Comcast of McKinney on this issue.

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that the Appeal filed by Comcast Cablevision of Dallas, Inc., in CSB-A-0711 **IS DENIED** and that the Appeal filed by Comcast of California/Colorado/Illinois/Indiana/Texas, Inc., in CSB-A-0712 **IS GRANTED IN PART** and **DENIED IN PART** and **IS REMANDED** for further consideration consistent with this Order.

20. 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
Deputy Chief, Policy Division, Media Bureau

³⁸ McKinney Tolling Letter, *supra* note 4, at 2.

³⁹ *See, e.g.*, 47 CFR § 76.922 (e)(i) (with certain exceptions, one of which is new equipment, “operators that elect the annual rate adjustment method may not adjust their rates more than annually to reflect [various factors]. . . . An operator may change its filing date from year-to-year, but except as described [elsewhere], at least twelve months must pass before the operator can implement its next annual adjustment.”).

⁴⁰ *Comcast Cablevision of Dallas, Inc.*, 19 FCC Rcd at 10642 ¶ 32 (“The Cities had no authority to prolong the effectiveness of any Comcast rate for more than one year. . . . To the extent that the Cities[‘] . . . rate orders purported to prolong any Comcast rate in effect for more than one year . . . the Cities exceeded their authority.”).