

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

In the Matter of)
)
Enstar Income/Growth Program Six-B.)
) File No. CSB-A-0412
Appeal of Local Rate Order of the)
City of Bowdon, GA (CUID GA0399))
)

MEMORANDUM OPINION AND ORDER

Adopted: June 21, 2002

Released: June 25, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Enstar Income/Growth Program Six-B (“Falcon”), a franchised cable operator in the City of Bowdon, Georgia (the “City”), petitioned for review of a rate order (the “Rate Order”) adopted by the City.¹ The City filed an opposition,² and Falcon replied.³ For the reasons set forth below, we deny the Petition, in part, and dismiss it as moot, in part.

II. STANDARD OF REVIEW

2. Where effective competition is absent, rates charged for the basic service tier (“BST”), and associated equipment and installation, are subject to regulation by local franchising authorities in accordance with regulations prescribed by the Commission.⁴ Rate orders issued by franchising authorities may be appealed to the Commission.⁵ In ruling on an appeal, the Commission will not conduct a *de novo* review, but will sustain the franchising authority’s decision if it has a reasonable basis.⁶

¹ Petition for Review of Rate Order, CUID No. GA0399 (June 11, 1997) (“Petition”).

² Opposition of the City of Bowdon, Georgia to Petition for Review of Rate Order (June 19, 1997) (“City Opposition”).

³ Reply to Opposition (July 2, 1997) (“Falcon Reply”).

⁴ 47 U.S.C. § 543(a), (b).

⁵ 47 C.F.R. § 76.944.

⁶ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 5631, 5731 (1993).

III. BACKGROUND

3. In the Rate Order, the City ordered an adjustment to Falcon's BST rate on two separate grounds. First, the City found that Falcon had excluded contract labor expense from the calculation of its equipment basket on its Form 1200 and its initial Form 1205 when setting its initial permitted BST rate. However, in two subsequent Forms 1205, Falcon included contract labor when calculating its permitted Hourly Service Charge ("HSC"). To resolve this inconsistency, the City removed the contract labor expense from Falcon's Form 1200 BST rate calculation and included it in the equipment basket. That adjustment effectively would require Falcon to lower its BST rate, at least on a temporary basis. Second, Falcon did not use the current inflation factor when it calculated its inflation adjustment on Form 1240 for 1995-1996. As a result, the City found, Falcon had adjusted its rate for inflation by 2.96% for the period, rather than by 2.22%, the then current figure being used by the FCC. The City ordered Falcon to adjust its permitted rate accordingly.

4. In its Petition, Falcon argues that the "most equitable way" to resolve the inconsistency in its treatment of contract labor expense would have been for the City to permit Falcon's initial calculation to stand (*i.e.*, to exclude contract labor expense from the calculation of its equipment basket) and to make the adjustment in the subsequent and future Forms 1205.⁷ Falcon asserts that "permitting it to repair the inconsistency in this fashion would be less disruptive to it and to its subscribers."⁸

5. With regard to the inflation adjustment, Falcon conceded in its petition that it had used an outdated inflation adjustment factor, but objected to the City's chosen remedy.⁹ Instead, Falcon claimed, the City should have allowed the "excessive inflation taken by Falcon" to be "picked up in the true-up" the following year.¹⁰ Nonetheless, recognizing that, by the time it had filed its Reply, the true-up process contemplated by Form 1240 already had accounted for the inflation adjustment ordered by the City, Falcon asks that its Petition on this issue be dismissed as moot.¹¹

6. In Opposition, the City argues that the Commission should defer to its consistent treatment of the equipment basket components.¹² Further, the City takes issue with Falcon's characterization of the Rate Order as "disruptive."¹³ With respect to the inflation adjustment in the Rate Order, the City counters that subscribers should not have to await true-up to recover excessive inflation charges.¹⁴

⁷ Petition at 2.

⁸ *Id.*; *see also* Falcon Reply at 2.

⁹ Falcon Petition at 2.

¹⁰ *Id.* at 3. Form 1240 implements the Commission's rules governing the annual rate adjustment methodology.

¹¹ Falcon Reply at 3.

¹² City Opposition at 2.

¹³ *Id.*

¹⁴ *Id.* at 3.

IV. DISCUSSION

A. Contract Labor Expense

7. There is no dispute on the facts. Falcon excluded contract labor expense from its equipment basket in its Form 1200/1205 filing, but included contract labor expense in calculating its permitted HSC in subsequent Forms 1205. The only issue relates to the manner in which the City resolved this inconsistency. The City chose to delete the contract labor expense from the calculation of the initial permitted rate for basic service on Form 1200, and to recalculate Forms 1210 and 1240 accordingly. Falcon, on the other hand, argues that the inconsistency should have been resolved by recalculating the HSC on subsequent Forms 1205. This would have resulted, Falcon asserts, in appropriate relief for subscribers without necessitating a change in the BST rate.

8. We conclude that the City's decision on this issue, though perhaps lacking in elegance, was founded upon a rational basis. In essence, both Falcon and the City have adduced ways in which Falcon's prior inconsistent treatment of its contract labor expense might be remedied. Refunds to subscribers under either approach would be essentially the same.¹⁵ Although the City might have accepted Falcon's approach or allowed the operator to bring its rates into compliance through refunds and adjustments to the next BST rate, which Falcon says was to have been implemented shortly,¹⁶ that judgment is the City's to make and it should be disturbed only if it is found to be factually unfounded or contrary to Commission rules or policies, neither of which is true in this case. The City's requirement that Falcon remove contract labor costs from programming rates on Form 1200 rather than from later-filed equipment rates is consistent with the requirements in 47 C.F.R. § 76.923(b) and (c) that the operator unbundle equipment from BST rates and include "all costs associated with providing customer equipment and installation" in the equipment basket.

B. Inflation Adjustment

9. While this proceeding was pending, Falcon filed a subsequent Form 1240, which included a true-up adjustment for its prior excessive inflation charge. The City does not controvert this fact. As a result, this aspect of the controversy has been rendered moot.

V. CONCLUSION

10. For the foregoing reasons, we deny, in part, and dismiss, in part, the Petition.

VI. ORDERING CLAUSES

11. IT IS ORDERED that the Petition for Review of Rate Order of Enstar Income/Growth Program Six B from a Rate Order of the City of Bowdon, Georgia, IS DENIED to the extent that it seeks reversal of the City's Rate Order adjustment to Falcon's treatment of its contract labor expense; and

12. IT IS FURTHER ORDERED that the Petition for Review of Rate Order of Enstar Income/Growth Program Six B from a Rate Order of the City of Bowdon, Georgia, IS DISMISSED AS MOOT to the extent that it seeks reversal of the Rate Order adjustment for excessive inflation charges.

¹⁵ Falcon Petition at 2.

¹⁶ Falcon Reply at 2.

13. 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
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