

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

In the Matter of)
)
 Rifkin & Associates, Inc.)
)
 Appeal of Local Rate Order of)
 the City of Duluth, GA)
 CUID GA 0272)

MEMORANDUM OPINION AND ORDER

Adopted: July 19, 2002

Released: July 23, 2002

By the Acting Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Rifkin & Associates, Inc./Cable Equities of Colorado, Ltd. d/b/a CableVision Communications (“Rifkin” or the “Company”), has filed an appeal of the local rate order resolution adopted by the City of Duluth, Georgia (“City”) on March 23, 1998. The City filed an opposition to the appeal, and Rifkin filed a reply. Rifkin also petitioned for a stay of the March 1998 rate order.

II. BACKGROUND

2. The Communications Act provides that, where effective competition is absent, cable rates for the basic service tier ("BST") are subject to regulation by franchising authorities.¹ Rates for the BST should not exceed rates that would be charged by systems facing effective competition, as determined in accordance with Commission regulations for setting rates.² Rates for regulated equipment and installation services on the customer's premises, the equipment basket, must be based on the operator's actual costs.³ Operators using the Commission’s revised benchmark methodology for determining initial regulated BST rates file FCC Form 1200.⁴ Operators adjust BST rates periodically for changes in inflation, the number of regulated channels, and external costs, including changes in the cost of programming.⁵ Operators using

¹ 47 U.S.C. § 543(a)(2).

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

³ 47 U.S.C. § 543(b)(3); 47 C.F.R. § 76.923(a)(2).

⁴ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 9 FCC Rcd 4119 (1994) ("Second Reconsideration Order"); FCC Form 1200, Setting Maximum Initial Permitted Rates for Regulated Cable Services Pursuant to Rules Adopted February 22, 1994. Operators may also elect to justify rates with a cost-of-service showing.

⁵ 47 C.F.R § 76.922(d), (e), (f).

the quarterly rate adjustment method file as often as quarterly and at least annually on FCC Form 1210. Operators using the annual rate adjustment method file on FCC Form 1240. Operators adjust regulated cable equipment and installation rates with FCC Form 1205.

3. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.⁶ 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 reasonable basis for that decision exists.⁷ 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

4. In its petition for review, Rifkin points out that on February 13, 1998, it filed a petition with the Commission asserting its deregulated rate status based on the effective competition being experienced in the Duluth market from BellSouth Interactive Media Services, Inc., ("BIMS") a local exchange carrier affiliate.⁸ Rifkin asserts that it demonstrated that the City of Duluth has no authority to regulate local cable rates.⁹ In its opposition to the appeal order the City states that it has the authority to regulate the rates of Rifkin.¹⁰ On February 5, 2001, however, the Bureau issued an order finding that Rifkin is subject to effective competition as a result of the offering of cable television service by BIMS.¹¹ In conjunction with that finding, we revoked the City's certification to regulate Rifkin's rates.¹²

5. Based on the record, we conclude that Rifkin was subject to effective competition as of the date of filing of its petition for effective competition, February 13, 1998.¹³ Therefore, the City could not prescribe rates after February 13, 1998. The local rate order under review was adopted by the City on March 23, 1998. The revocation of certification removed the City's authority to regulate Rifkin's rates.¹⁴

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

⁷ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5731-32 (1993) ("*Rate Order*"); 9 FCC Rcd 4316, 4346 (1994) ("*Third Reconsideration Order*").

⁸ Rifkin Appeal at 2.

⁹ *Id.* at 1.

¹⁰ City of Duluth Opposition at 2.

¹¹ *Rifkin & Associates*, 16 FCC Rcd 2918 (CSB 2001).

¹² *Id.* at 2922.

¹³ See *Falcon Cablevision (Thousand Oaks, California)*, 12 FCC Rcd 8229, 8234 (CSB 1997).

¹⁴ Our action on the appeal renders Rifkin's petition for stay moot.

6. Accordingly, **IT IS ORDERED** that the Appeal of Rifkin & Associates, Inc./Cable Equities of Colorado, Ltd. d/b/a CableVision Communications, from a Rate Order of the City of Duluth, Georgia **IS GRANTED** and said local rate order is **IS HEREBY VACATED**.

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

FEDERAL COMMUNICATIONS COMMISSION

Steven Broeckaert
Acting Chief, Policy Division
Media Bureau