

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

In the Matter of)	
)	
TCI TKR of Georgia, Inc.)	
)	File No. CSB-A-0652
Appeal of Local Rate Order of the City of Bainbridge, Georgia (CUID No. GA0100))	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2000

Released: May 25, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. TCI TKR of Georgia, Inc. (“the Company”), the operator of a cable system serving Bainbridge, Georgia, appealed a local rate decision of the City of Bainbridge (“City”) that denied the operator’s request to increase rates charged to basic service tier (“BST”) subscribers.¹ The City did not file an opposition to the appeal. For the reasons stated herein, we grant the appeal and remand the rate order to the City for further proceedings.

2. Under the Commission's rules, rate orders issued by local franchising authorities (“LFAs”) 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 instead will sustain the franchising authority's decision provided there is a reasonable basis 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 instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.⁴

¹ Appeal of Local Rate Order (April 12, 2000); Rate Order adopted by the Mayor and City Council of the City of Bainbridge on March 21, 2000, and signed by the City Manager on March 22, 2000.

² 47 C.F.R. § 76.944.

³ See 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 in MM Docket No. 92-266, 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 Reconsideration*”).

⁴ *Rate Order* at 5732.

3. An operator seeking to justify its existing or proposed rates for the BST, equipment or installation bears the burden of demonstrating that the rates conform with our rules.⁵ In determining whether the operator's rates conform with our rules, 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 requested rate increases or issue a written decision explaining why the operator's rates are not reasonable.⁷ If the franchising authority determines that the operator's proposed rates exceed the maximum permitted rate ("MPR") 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 the prescribed rate is reasonable.⁸ Prescribed rates may not be less than the rates permitted under the Commission's rules.

4. In its one-page local rate decision⁹ disapproving the Company's proposed BST rate increase of \$0.57, the City states, "It is the strong feeling of the Mayor and City Council and many citizens present that your FCC Form submitted while mathematically might justify the increase proposed it does not tell the whole story. The cable system in Bainbridge has been left behind technologically and the level of service provided is unacceptable." The rate order further indicates that the City has been promised for years that the system would be upgraded, that it has not been, and that the system constantly has operational difficulties and does not provide the level of service provided by the Company to many communities in the area.

II. DISCUSSION

5. The Company asserts that the Commission should reverse the local rate order because it rejects the operator's proposed rates for reasons unrelated to the underlying benchmark forms and because the Commission has repeatedly overruled local franchising authorities who reject legitimate rate increases for improper reasons.¹⁰

6. We agree with the operator. The City must follow the Commission's rate regulations when reviewing an operator's rate filing.¹¹ As we stated in *Falcon Cable Media*, if a local franchising authority does not dispute the bases for the figures presented in a cable operator's rate forms and has not discovered any mathematical errors in the forms, the LFA should approve the operator's rates as derived from those forms.¹² If an LFA rejects an operator's proposed rates, it must issue a written decision affirmatively demonstrating why the rates are unreasonable.¹³ The LFA may address other, non-rate

⁵ 47 C.F.R. § 76.937(a).

⁶ See *Rate Order*, 8 FCC Rcd at 5718-19; *Third Reconsideration*, 9 FCC Rcd at 4348.

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

⁸ See *Century Cable of Southern California*, 11 FCC Rcd 501 (Cab. Serv. Bur. 1955); *TCI of Iowa, Inc.*, 13 FCC Rcd 12020, 12022 (Cab. Serv. Bur. 1998).

⁹ See Attachment to the Company's Appeal of Local Rate Order.

¹⁰ The Company's Appeal at 1-3.

¹¹ In *TCI of Southeast Mississippi*, the local franchising authority was specifically prohibited from considering the effect of such things as a system's unsatisfactory signal quality. 10 FCC Rcd at 8730-31. *Century Cable of Southern California, supra*.

¹² 13 FCC Rcd 11996, 11998 para. 6 (Cab. Serv. Bur. 1998).

¹³ 47 C.F.R. § 76.936; *Rate Order*, 8 FCC Rcd at 5715-5716

concerns through our rules on technical standards,¹⁴ our rules on customer service obligations,¹⁵ the LFA's own cable regulations, and the franchise agreement.

7. The LFA may not arbitrarily reduce BST rates below permitted rate levels or deny a justified increase of the permitted rate in an effort to address quality of service issues. Therefore, we find that the City of Bainbridge acted unreasonably in denying the Company's requested rate increase and that the City's rate order does not meet the standards for a written decision under the Commission's rules.¹⁶ Consequently, we remand this local rate order to the City so that it can reconsider its ruling in a manner consistent with our findings.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Appeal of Local Rate Order filed by TCI TKR of Georgia, Inc., on April 12, 2000, **IS GRANTED** and the local rate order of the City of Bainbridge, Georgia, is remanded to the City for further consideration consistent with the terms of this Memorandum Opinion and Order.

9. **IT IS FURTHER ORDERED** that the City of Bainbridge, Georgia, shall not enforce matters remanded for further consideration pending further action by the City on those matters.

10. 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

¹⁴ See 47 C.F.R. §§ 76.601-630.

¹⁵ 47 C.F.R. 76.309.

¹⁶ 47 C.F.R. §76.936(a), (b); see *Rate Order*, 8 FCC Rcd at 5715; *Falcon Cable Media*, 13 FCC Rcd 11996, 11998 (Cab. Serv. Bur. 1998).