

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

In the Matter of
FALCON CABLEVISION
Appeal of Local Rate Order of
the City of Cave Spring, GA
CUID GA0213
File No. CSB-A-0445

MEMORANDUM OPINION AND ORDER

Adopted: April 17, 2001

Released: April 25, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Falcon Cablevision ("Falcon"), a franchised cable operator serving the City of Cave Spring, GA ("City"), has appealed a local rate order adopted by the City on June 10, 1997. The operator contends that the City made certain errors in recalculating its basic service tier ("BST") rate and in adjusting its equipment lease rates. The City filed an opposition to the appeal, arguing, in part, that Falcon's Appeal was not timely filed. Falcon filed a reply. Based upon our review of the record and for the reasons discussed below, we are dismissing Falcon's appeal of the City's June 1997 rate order as untimely filed.

II. ANALYSIS AND DECISION

2. Under the Communications Act, the Commission reviews appeals of rate orders issued by local franchising authorities ("LFA"). When considering appeals, the Commission will not conduct a de novo review, but instead will sustain the LFA's decision as long as it did not act unreasonably in applying federal rules. If the Commission reverses an LFA's decision, it will not substitute its own judgment, but will remand the case with instructions to resolve it consistent with the decision.

1 Petition for Review of Rate Order (July 11, 1997) ("Falcon Appeal").

2 Opposition of City to Petition (July 22, 1997) ("City Opposition").

3 Reply (July 31, 1997) ("Falcon Reply").

4 47 C.F.R. § 76.944; Rate Regulation, Report and Order, 8 FCC Rcd 5631, 5729 (1993) ("Rate Order").

5 Rate Order, 8 FCC Rcd at 5732; Rate Regulation & Buy-Through Prohibition, Third Order on Reconsideration, 9 FCC Rcd 4316, 4346 (1994) ("Third Recon.").

6 See Rate Order, 8 FCC Rcd at 5732; see also, Third Recon., 9 FCC Rcd at 4346.

3. The Commission's rules provide that a franchising authority disapproving a rate increase must issue a written decision and give public notice of the written decision, including releasing the text of the decision to the public.⁷ Any participant in the local rate proceeding may appeal the franchising authority's rate decision to the Commission within 30 days of the release of the text as computed under section 1.4(b) of the Commission's rules.⁸ In the instant case, the parties disagree as to when release of the City's rate order occurred and, depending on the release date, whether Falcon's appeal on the issues of its BST and equipment lease rates was timely filed.

4. The Cave Spring City Council adopted a rate order addressing Falcon's BST and equipment rates at a meeting on June 10, 1997. Falcon, in a footnote to its petition, claims that the appeal was timely filed because a copy of the rate order with an accompanying letter dated June 11 was not made available to Falcon until the rate order was mailed. The rate order had a postmark of June 25 and was received by Falcon on June 30, 1997.⁹ The City, in its Opposition, argues that Falcon's appeal was filed 31 days after the release and asks that the appeal be dismissed as untimely. According to the City, copies of the rate order were available to the public on June 10, 1997, at the public City Council meeting during which the rate order was adopted.¹⁰ This statement is verified by an affidavit from the Mayor declaring that the facts in the City's Opposition "are true and correct to the best of my knowledge."¹¹

5. In the Falcon Reply, the operator states that it did not obtain a copy of the rate order on June 10th because it never received notice that its rate adjustment request was going to be considered at that meeting, and thus had no representative there to obtain a copy of the rate order. Falcon asserts that it believes that copies of the signed and dated version of the rate order were not "released" on June 10. Although unsigned copies may have been available, it believes official signed and dated copies would not have been available, and its regional manager was not able to obtain signed and dated copies from the City Clerk's office on the following day. If the rate order was unsigned and not dated on June 10th, it cannot be said to be "released." Falcon argues that the earliest time that a petition for review 30-day time period would begin running in this matter was June 11.

6. As noted above, under the Commission's regulations, when an LFA rejects an operator's proposed rate increase, the LFA must release its decision in writing.¹² The Commission's rules require public notice, but leave the method of giving public notice to local authorities.¹³ They also provide for counting the 30-day appeal period from the release of the text of the franchising authority's decision.¹⁴

⁷ 47 C.F.R. § 76.936(b).

⁸ 47 C.F.R. § 76.944(b); 47 C.F.R. § 1.4(b).

⁹ Falcon Appeal at n.1, p. 1.

¹⁰ City Opposition at pp. 2-4.

¹¹ *Id.*, Affidavit of A. L. Tate, Mayor, City of Cave Spring (July 21, 1997), Attachment to City Opposition.

¹² 47 C.F.R. § 76.936(a).

¹³ See *Falcon Classic Cable v. McCreary County*, 15 FCC Rcd 5717, 5718 para. 4 (Cab. Serv. Bur. 2000) (public notice under section 76.936(b) should be given in a manner consistent with applicable local law or regulations governing a franchising authority's rate review).

¹⁴ 47 C.F.R. § 76.944(b). See *Rate Order*, 8 FCC Rcd at 5730-31 & n. 394, *Third Recon.*, 9 FCC Rcd at 4341. The Commission has viewed this 30-day limit very strictly, and will accept a late pleading only when the petitioner can show good cause by citing the intervention of something beyond the control of the party, which (continued....)

There is no provision for tolling the release date if a franchising authority later mails a copy to the cable operator.¹⁵ Falcon makes no claim that is supported or verified by affidavit or other evidence that applicable law or regulations were not followed in the City's release of its rate order on June 10th. Moreover, it offers no other intervening reason or rationale for its late-filed appeal or its failure to file a motion to show good cause why its petition should be heard.¹⁶ In light of the adoption date of June 10, 1997 shown on the rate order and the City's verified assertion that copies were released on that date, we find that Falcon's appeal should have been filed on or before July 10, 1997, the thirtieth day after the public release of the rate order as computed under section 1.4(b). Because the appeal was filed July 11, 1997, one day after the deadline, it is untimely and will be dismissed.

7. Accordingly, IT IS ORDERED that the Petition for Review of Rate Order filed by Falcon Cablevision for review of the local rate order adopted June 10, 1997, by the City of Cave Spring, Georgia, IS DISMISSED.

8. 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

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could not have been foreseen, and for which no corrective action could have been taken. *See Meredith/New Heritage Strategic Partners*, 9 FCC Rcd 6841, 6843 (1994) ("*Meredith*").

¹⁵ *See C4 Media Cable SE, L.P.*, 10 FCC Rcd 9431, 9431 para. 5 (Cab. Serv. Bur. 1995).

¹⁶ *See Meredith*, 9 FCC Rcd at 6842-6843, where the Commission stated that it would look with disfavor at petitions seeking review of local franchising authority decisions that are filed out-of-time, regardless of the degree of lateness, and that such late-filed petitions must be accompanied by the appropriate motions demonstrating good cause why the Commission should hear the matter.