

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

In the Matter of:)	
)	
TCI TKR of Georgia, Inc.)	Cuid No. GA0100
)	File No. CSB-A-0667
Appeal of Local Rate Order of)	
the City of Bainbridge, Georgia)	

MEMORANDUM OPINION AND ORDER

Adopted: July 24, 2001

Released: July 26, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. TCI TKR of Georgia, Inc. (“TCI”), the franchised operator of a cable system serving the City of Bainbridge, Georgia (“City”) has appealed the rate decision adopted by the City on June 20, 2001. The contested rate order denied the operator’s request to increase rates charged for basic service.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 (June 25, 2001); Rate Order adopted by the Mayor and City Council of the City of Bainbridge on June 19, 2001, and signed by the City Manager on June 20, 2001.

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 that wants to increase its BST rate has the burden of demonstrating that the increase is in conformance with the Commission's 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 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

4. In its one-page local rate decision⁹ disapproving TCI's proposed BST rate increase of \$0.64, the City states, "The city council does not feel that based on the quality of the services provided to the citizens of Bainbridge by AT&T Broadband that this increase is justified."

II. DISCUSSION

5. TCI asserts that the Commission should reverse the local rate order because it rejects the operator's proposed rate 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 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 rate 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 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.

⁵ 47 C.F.R. § 76.937(a).

⁶ See *Rate Order*, 8 FCC Rcd at 57-18-19; *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 TCI's Appeal of Local Rate Order.

¹⁰ TCI'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

¹⁴ See 47 C.F.R § 76.601-630.

¹⁵ 47 C.F.R. 76.309.

7. As we stated in a previous decision with respect to a similar rate order adopted by the City last year,¹⁶ 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 TCI'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.¹⁷ 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 June 25, 2001 **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.R.F. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁶ See *TCI TKR of Georgia Inc.*, 15 FCC Rcd 9123 (Cab. Serv. Bur. 2000).

¹⁷ 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).