

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

In the Matter of: )  
 )  
TIME WARNER CABLE ) CUID NC0173  
 ) File No. CSB-A-0663  
 )  
Appeal of Local Rate Order Issued by )  
Cabarrus County, North Carolina )

MEMORANDUM OPINION AND ORDER

Adopted: August 31, 2001

Released: September 14, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Time Warner Cable (“TWC”) the franchised operator of a cable system serving Cabarrus County, North Carolina (“County”), has appealed the rate decision adopted by the County on February 19, 2001. The contested rate decision denied the operator’s request to increase rates charged for basic service.<sup>1</sup> The issue is whether the County issued a written rate decision that properly explained its denial of TWC’s proposed rates. The County did not file an opposition to the appeal.

2. Under the Commission’s rules, rate orders issued by local franchising authorities (“LFAs”) may be appealed to the Commission.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

<sup>1</sup> Appeal of Local Rate Order (March 21, 2001); Exhibit A, Letter from John D. Day, Deputy County Manager, to Robert Melton, General Manager, Time Warner Cable (March 1, 2001)

<sup>2</sup> 47 C.F.R. § 76.944.

<sup>3</sup> 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”).

<sup>4</sup> 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.<sup>5</sup> In determining whether the operator's rates conform with our rules, a franchising authority may direct the operator to provide supporting information.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

## II. DISCUSSION

4. TWC contends that the Commission should reverse the local rate decision because the County has failed to provide a proper written explanation or documentation of its decision disapproving the proposed rate increase, and because the Commission has repeatedly overruled local franchising authorities that reject legitimate rate increases for improper reasons.<sup>9</sup>

5. In a one-page letter, dated March 1, 2001, the Deputy County Manager notified TWC that the County Board of Commissioners, at its February 19<sup>th</sup> meeting, did not approve Time Warner's proposed rate increases for 2001.<sup>10</sup> The County declined to accept its consultant's recommendation to approve the rate increase, and instead, voted 3-2 against granting the rate increase. The letter sent by the County to TWC fails to demonstrate that the County's denial of TWC's rate increase is based on the Commission's rules governing rates.

6. The County must follow the Commission's rate regulations when reviewing an operator's rate filing.<sup>11</sup> 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.<sup>12</sup> If an LFA rejects an operator's proposed rates, it must issue a written decision affirmatively demonstrating why the rates are unreasonable.<sup>13</sup>

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<sup>5</sup> 47 C.F.R. § 76.937(a).

<sup>6</sup> *Rate Order* at 5718.

<sup>7</sup> 47 C.F.R. § 76.936; see *Ultracom of Marple Inc.*, 10 FCC Rcd 6640, 6641-42 (Cab. Serv. Bur. 1995).

<sup>8</sup> See *Century Cable of Southern California*, 11 FCC Rcd 501 (Cab Serv. Bur. 1995); *TCI of Iowa, Inc.*, 13 FCC Rcd 12020, 12022 (Cab. Serv. Bur. 1998).

<sup>9</sup> TWC Appeal at 1-3.

<sup>10</sup> TWC Appeal, Exhibit A.

<sup>11</sup> See *TCI of Southeast Mississippi*, 10 FCC Rcd 8728 (Cab. Serv. Bur. 1995), *reconsideration denied on other grounds*, 13 FCC Rcd 11080 (Cab. Serv. Bur. 1998); *Century Cable of Southern California, supra*.

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

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

7. Therefore, we find that the County's denial of TWC's rate increase without explanation does not meet the standards for a written decision under the Commission's rules.<sup>14</sup> Consequently, we grant the appeal and remand this case to the County for further consideration consistent with our findings.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Appeal of Local Rate Order filed by Time Warner Cable, on March 21, 2001 **IS GRANTED** and the local rate order of Cabarrus County, North Carolina **IS REMANDED** to the County for further consideration consistent with the terms of this Memorandum Opinion and Order.

9. **IT IS FURTHER ORDERED** that Cabarrus County, North Carolina shall not enforce matters remanded for further consideration herein pending further action by the County 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

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<sup>14</sup> 47 C.F.R. § 76.936(a), (b); see *Rate Order*, 8 FCC Rcd at 5715; *Falcon Cable Media*, 13 FCC Rcd at 11998.