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

In the Matter of :	)	
	)	
Community TV Corporation d/b/a The Americable Group	)	CSB-A-0132-S
	)	CSB-A-0135-S
	)	CSB-A-0136-S
Appeals of Local Rate Order in Amherst, New Hampshire; Litchfield, New Hampshire; Merrimack, New Hampshire; Milford, New Hampshire	)	CSB-A-0137-S

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 2003 **Released: March 17, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Community TV Corporation d/b/a The Americable Group ("Community") has filed separate appeals on behalf of certain New Hampshire communities of local rate orders adopted by the Towns of Amherst, Litchfield, Merrimack, and Milford, New Hampshire. Community is appealing the following rate orders: Milford, New Hampshire, issued January 16, 1995; Merrimack, New Hampshire, issued January 19, 1995; Litchfield, New Hampshire, issued January 23, 1995; and Amherst, New Hampshire, issued January 23, 1995.

2. Each Town filed an opposition, to which Community filed a reply. In addition, Community filed an emergency stay request. Because we resolve the issues raised in these appeals on the merits, the emergency stay request is rendered moot. Several issues arise in the pleadings. Because these rate appeals have identical issues and involve similar parties, we will consolidate our consideration of these matters.

II. BACKGROUND

3. Under the Commission's rules, rate orders issued by local franchising authorities may be appealed to the Commission. In ruling on an appeal of a local rate order, the Commission 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.[1] If the Commission reverses a franchising authority's decision, it will not substitute its own decision but will remand the issue to the franchising authority with instructions to

[1] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation,* 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 Order on Reconsideration").

resolve the case consistent with the Commission decision on appeal.[2]

4. An operator proposing an increase in basic service tier ("BST"), equipment or installation rates bears the burden of demonstrating that the proposed increase conforms with our rules.[3] In determining whether the operator's proposed increase conforms with our rules, a franchising authority may direct the operator to provide supporting information.[4] After reviewing an operator's rate forms and other additional information submitted, the franchising authority may approve the operator's requested rate increase or issue a written decision explaining why the operator's rate is not reasonable.[5] If the franchising authority determines that the operator's proposed rate exceeds the maximum permitted rate as determined by the Commission's rules, it may prescribe a rate different from the proposed rate provided that it explains why the operator's rate is unreasonable and the prescribed rate is reasonable.

5. In the rate filings at issue in this case, Community used Form 1200, 1205 and 1210. In Form 1200, an operator calculates its initial maximum permitted rates for the basic and cable services programming tiers. An operator may change its maximum permitted rates every quarter, using Form 1210, or every year, using Form 1240. In Form 1205, an operator determines the costs of regulated cable equipment and installation for the basic service tier.

III. DISCUSSION

A. Community's Rates and Refund Liability.

6. When a cable operator files a benchmark rate justification, Commission rules provide a franchising authority 30 days in which to review the rate filing before the proposed rates become effective.[6] A franchising authority may toll this deadline for an additional 90 days, by issuing a brief written order, if it needs more time to review the filing, which gives the franchising authority a total of 120 days to issue an order before the proposed rates go into effect.[7] In addition, our rules provide that if a franchise authority does not make a decision by the end of the 90-day period, it must issue an Accounting Order before the end of the tolling period to preserve its ability to order refunds.[8]

7. If an operator files a facially incomplete rate justification, which includes the failure to file necessary supporting schedules, the deadlines for the franchising authority to rule on the reasonableness of proposed rates are suspended while the franchising authority awaits receipt of the necessary information.[9] Once the supplemental information has been served on the franchising authority, the time for determining the reasonableness of the rate by the franchising authority will recommence.[10] If an operator files a complete filing, but one about which the local authority has questions, the deadlines

[2] *Rate Order*, 8 FCC Rcd at 5732.

[3] 47 C.F.R. § 76.944.

[4] *See Rate Order,* 8 FCC Rcd at 5718-19.

[5] 47 C.F.R. § 76.936; *see Ultracom of Marple Inc.,* 10 FCC Rcd 6640, 6641-42 (CSB 1995).

[6] *See* 47 C.F.R. § 76.933(a).

[7] *See* 47 C.F.R. § 76.933(b). In the case of a cost-of-service filing, the local franchising authority may extend the review period by 150 days. *Id.* This would give the local franchising authority a total of 180 days (the original 30 days plus the additional 150 days) to review the cost-of-service filing before the proposed rates would go into effect.

[8] 47 C.F.R. § 76.933(c).

[9] *See Third Reconsideration Order,* 9 FCC Rcd at 4348.

[10] *Id.*

may not be automatically suspended.[11] Such a filing would be one that is submitted in good faith, but about which the regulatory authority has certain questions or reasonably feels requires clarifying or substantiating information.[12] However, if the information sought is so significant as to delay the entire examination of the rest of the rate justification the franchising authority could be justified in delaying its ruling.[13] Through these mechanisms, the franchising authority is given time to review a rate justification fully, while the cable operator is protected from having to operate in an uncertain regulatory environment for an indefinite period of time.

8. Community states that on June 23, 1994, the Towns received Community's Forms 1200 and 1205.[14] Community indicates that on July 13, 1994, Amherst sent Community a letter stating that Community's Form 1200 was illegible, and requested Community to provide a copy of the Form 1200 to Amherst as soon as possible.[15] Merrimack, Milford, and Litchfield made a similar request on July 18, 1994.[16] Community points out that in response, it reprinted both its Form 1200 and Form 1205 and submitted to the Towns copies of these forms.[17] In the Towns' July 13 and July 18, 1994 letters, Community asserts that the Towns also stated that each was still in the process of analyzing and evaluating the Form 1200 and that an additional 90 days was needed to review the proposed rates, subject to a reservation of rights, which the Towns explained as being the right to extend the total review period, effective upon receiving a legible copy of the Form 1200.[18] Community asserts that pursuant to Section 76.933(b) the Towns were only permitted to extend the review date for 90 days from the date 30 days after the date of submission.[19] Community states that the Towns acknowledged that the forms were submitted on June 23, 1994 and that 30 days thereafter would be July 23, 1994, and Community argues that pursuant to Section 76.933(b), Friday, October 21, 1994, was the end of the extended review period.[20]

9. Community asserts that in October, by letter, the Towns indicated that since a "legible" copy of Form 1200 was not received until the end of July, the Form 1200 review period would run until the end of November, which Community asserts was in direct violation of Section 76.933(c) which required the Towns to either issue a rate determination by October 21, 1994 or issue an Accounting Order.[21] Subsequently, Community advised the Towns that pursuant to Section 76.933(c), its rates had become effective and the Towns were precluded by the Commission's rules from ordering any refunds.

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[11] *Id.*

[12] *Id*.

[13] *Id.*

[14] Appeal Petition at 3-4.

[15] *Id.* at 4.

[16] *Id.*

[17] *Id.* Community submitted copies of these forms to the Town of Merrimack on July 22, 1994; to the Town of Milford on July 26, 1994; and the Towns of Amherst and Litchfield on July 29, 1994.

[18] *Id.* at 5.

[19] *Id.*

[20] *Id*.

[21] *Id.* at 5-6. The letter from the Towns of Amherst and Litchfield to Community was dated October 17, 1994; the letter from the Town of Milford to Community was dated October 18, 1994; and the letter from the Town of Merrimack to Community was dated October 21, 1994. The Towns of Amherst and Litchfield indicated that the Form 1200 review period would run from July 29, 1994 to November 29, 1994; the Towns of Milford and Merrimack indicated that the Form 1200 review period would run from July 26, 1994 to November 26, 1994 (Community notes that the review period for the Town of Merrimack should run from July 22, 1994 and not July 26, 1994).

Community argues that the Towns' claim that the Forms 1200 and 1205 were illegible does not permit it to extend the period for review until the end of November, 1994, and moreover the forms submitted were nowhere near "completely illegible" as claimed by the Towns.[22] In addition, Community asserts that the Commission has explained the proper treatment of deficient rate justifications and has expressly rejected the notion that an incomplete filing may be rejected automatically and treated as a non-filing.[23]

10. In their opposition, the Towns state that Community's initial Forms 1200 and 1205 submitted on June 23, 1994, were totally illegible and unsigned and that on July 18, 1994, they wrote Community requesting legible copies of the forms.[24] The Towns assert that each extended the period to review Community's basic rates and equipment charges for an additional 90 days, effective upon receipt of legible copies of the forms.[25] The Towns acknowledge that Community resubmitted legible copies of its Forms 1200 and 1205 in July, however, each points out that neither form had been signed.[26] The Towns also claim that although legible copies of Community's Forms 1200 and 1205 were resubmitted, the copies still carried the initial submission date.[27] In addition, the Towns assert that because the 120-day review period had been extended until the end of November, 1994, the Accounting Orders submitted were filed in a timely, reasonable and responsible manner.[28] The Towns assert that thereafter in December 1994, each received a letter from Community claiming that the Accounting Orders were issued after the end of the 120-day review period.[29] However, the Towns note that at no time prior to the issuance of the Accounting Order did Community disagree in any way with the Towns' review period extension.[30]

11. In reply, Community states that the Towns did not have the authority to extend the rate review period until the end of November and accordingly, since the Towns did not issue Accounting Orders within the time frame specified in the rules, a refund cannot be ordered.[31] Community asserts that its Forms 1200 and 1205 were not "totally illegible" as claimed and that the filing was not so incomplete that the Towns should have been able to toll the review period.[32] However, Community adds that even if its original rate filing was completely illegible, Commission rules only permit an extension for the time it takes to cure the alleged illegibility,[33] and in that case, each Town should have issued an Accounting Order based on that date, which each failed to do.[34] In addition, Community asserts that the Towns'

[22] *Id.* at 8-9. Community states that even if the forms were completely illegible, the maximum permitted extension would have been the time between when the Towns notified Community of the problem and the date Community filed reprinted forms.

[23] *Id.* at 9. *See Third Order on Reconsideration,* 9 FCC Rcd 4316 (1994).

[24] Opposition at 3. The Town of Amherst sent its letter on July 13, 1994.

[25] *Id.*

[26] *Id.* The Towns of Amherst, Litchfield, and Milford note that at a rate hearing held November 7, 1994 each informed Community that neither Form 1200 nor Form 1205 had been signed. The Town of Merrimack held its rate hearing on November 14, 1994, and informed Community of the unsigned forms at that time.

[27] We note that Community's resubmission of legible copies of its already filed forms would not warrant adopting a new submission date.

[28] *Id.* at 4.

[29] *Id.*

[30] *Id.*

[31] Reply at 3.

[32] *Id.* at 4. *See Third Order on Reconsideration,* 9 FCC Rcd at 4348.

[33] *Id.*

[34] *Id.*

allegation of unsigned Forms 1200 and 1205 is without merit because the cover letter to Community's filings was signed by an officer of Community, and the Towns were not prejudiced in their review and could easily have asked for signed copies.[35]

12. Based on our review of the record, the Towns' argument that the review period was extended into November is unavailing.[36] The Towns notified Community of their need for additional review time of Community's rate filings within the allotted time to issue such a tolling order.[37] Section 76.933(a) of the Commission's rules provides that proposed rates will become effective after 30 days from the date of submission, unless a franchising authority tolls the deadline by issuing a brief written order explaining the need for additional time to review the rates.[38] Although the Towns' requests for additional time were in the form of a letter, not an order, the letter document sent to Community served the purpose of explaining the decision of the Towns to extend the review period of Community documents until October 23, 1994. Therefore, we will treat the Towns' correspondence as a brief, written order which was in compliance with the Commission's rules.

13. Accordingly, we find that the Towns adopted a tolling order with respect to Community's Forms 1200 and 1205 which extended the review period for 90 days, in accordance with the Commission's rules from July 23, 1994, until October 21, 1994.[39] We can accept the Towns' argument that the forms were totally illegible, thus suspending the review period, but even that additional time does not make the Towns' Accounting Orders timely. The Town of Amherst requested legible copies of Community's forms on July 13, 1994 and received them on July 29, 1994. So its review period was further extended 16 days. The other three towns requested legible copies on July 18, 1994. The Town of Merrimack received its copies on July 22, 1994, gaining an additional four days. The Town of Milford received its copies on July 26, 1994, gaining an additional eight days. And the Town of Litchfield received its copies on July 29, 1994, gaining an additional 11 days. The Accounting Orders, however, were issued on November 16, 1994; November 17, 1994; and November 21, 1994, which were all beyond the end of the extended review period. Because the Towns failed to present a formal review of Community's rates in a timely manner, the Towns did not retain their authority to order Community to issue refunds. However, although we find that the Towns lost their authority to require subscriber refunds as part of their rate orders, they did not lose their authority to regulate rates and order prospective rate reductions.[40]

14. We also find that the alleged absence of signatures on Community's forms did not produce the effect the Towns ascribe to it. The Towns allege that the forms were not signed by Community, warranting a further extension of the review period. Community argues that the Towns'

[35] *Id.* at 4. Moreover, Community states that contrary to what the Towns allege, Community never acknowledged that it failed to sign its Form 1200s.

[36] We note that the Towns' letter dated July 18, 1994, only indicated that additional time was needed to analyze and evaluate Community's Form 1200. No reference is made to reviewing Form 1205. In the pleadings filed, however, both Community and the Towns include Community's Form 1205 and Form 1200 in the argument discussing issues related to the Towns' extension of time request. Therefore, the extension of the review period that applies to Community's Form 1200 also applies to its Form 1205.

[37] *See* 47 C.F.R. § 76.933(a).

[38] *See* 47 C.F.R. §§76.933(a) and 76.933(b).

[39] Community asserts that the applicable date should be October 21, 1994, and we note that in the July 18, 1994, letter, the Towns requested until October 23, 1994, to extend the period of time to review Community's rates. Although Community appears to have indicated no opposition to that date before the filing of this appeal, the 90-day period ended on October 21, 1994.

[40] *See TCI Cablevision of Oakland County, Inc.,*11 FCC Rcd 2542, 2544 (CSB 1996).

charge is without merit because the forms were submitted under a cover letter signed by an officer of Community. We agree. The Towns cannot use the alleged absence of signatures on the forms themselves to extend the review period beyond the extensions afforded by the issuance of the tolling order and by the request for legible copies. The absence of signatures on the forms themselves is not so significant as to warrant delaying the Towns' examination of the forms.[41]

B. Community's Form 1210 Update Form Ended 30 Days After Submitted.

15. On June 29, 1994, Community submitted Form 1210, the "update" form which reflected the addition of Court TV to the BST. Community states that the Towns continued their review of Community's Form 1210 past the end of the review period.[42] With regard to its Form 1210 submission, Community states that the Towns never issued a tolling order and as a result Community's Form 1210 submission should be deemed approved by the Towns within the initial 30-day review period.[43] Community requests that the Commission advise the Towns that their review period for Form 1210 has lapsed, and that Community's Form 1210 is deemed to have been approved.[44]

16. As Community indicates, the Towns did not issue an order specifically relating to Form 1210.[45] Nor in their discussions regarding needing additional time to review Community's Forms 1200 and 1205 did the Towns reference Form 1210. Pursuant to Section 76.933, if a franchising authority determines that a cable operator's current rates for the basic service tier and accompanying equipment are reasonable under the Commission's rate standards, the rates will go into effect 30 days after they are submitted.[46] If the franchising authority is unable to determine whether the proposed rates for the basic service tier and accompanying equipment are reasonable, based on the material before it, the franchising authority may toll the effective date of the proposed rates for an additional period of time to make a final determination.[47] To toll the effective date of the proposed rates, the franchising authority must issue a brief order, within the initial 30-day period, explaining that the franchising authority needs additional time to review the proposed rates.[48] No such order was issued. Therefore, Community's Form 1210 and the rates therein, are deemed to have become effective 30 days after submission.

C. Home Wiring Maintenance Charge.

17. Regarding Community's home wiring maintenance charge, Community notes that the Towns ordered refunds of its monthly $0.13 home wiring maintenance charge, based on the conclusion that such a charge violated the prohibition against negative option billing.[49] Community asserts that this charge was unbundled from previously bundled rates, and as such is not subject to the negative option billing prohibition.[50] Community argues that the Commission has held that restructuring of tiers and

[41] *See Third Order on Reconsideration,* 9 FCC Rcd at 4348.

[42] Appeal Petition at 21.

[43] *Id. See* 47 C.F.R. § 76.933.

[44] *Id.* at 22.

[45] *See* Exhibit B. Letter from Town of Litchfield to Harmon S. White, President, The Americable Group, dated July 18, 1994.

[46] *See* 47 C.F.R. § 76.933.

[47] *Id.*

[48] *Id.*

[49] Appeal Petition at 15.

[50] *Id.*

equipment, including any restructuring due to implementation of the Cable Act,[51] will not bring the negative option billing provision into play if subscribers will continue to receive the same number of channels and the same equipment.[52] Consequently, Community asserts that because subscribers continued to receive the same level of service before and after unbundling, such a charge did not violate the negative option billing prohibition and that the Commission should find that the Towns' rejection of its home wiring maintenance charge was improper.[53]

18. The Towns assert that Community started charging this new home wiring maintenance charge without receiving advance authorization to do so from any subscribers.[54] Although Community states that it has a right to charge home wiring maintenance costs, the Towns argue that Section 76.981 of the Commission's rules provides that subscribers must affirmatively request any services and/or equipment and that subscribers in the Towns have not affirmatively requested the home wiring maintenance charge nor have they been afforded a choice on whether or not they wanted such a wiring plan.[55] The Towns point out that unlike the *Comcast Cablevision* case, which Community uses for support of its charge, Community never notified subscribers that the wiring charge was optional and that subscribers could cancel by telephone.[56] The Towns submit that Community must refund all subscribers the $0.13 monthly home wiring maintenance charge, retroactive to August 1, 1994, and prospectively until such time as Community complies with the rate order.[57]

19. In its Reply, Community states that its home wiring maintenance charge is not a negative option, because the charge meets the following conditions: (i) it previously was part of Community's bundled charges for the BST; (ii) following restructuring, the home wiring maintenance charge was charged separately; and (iii) Community's subscribers continued to receive the same service after bundling as before. Community points out these conditions have all been met.[58] In addition, Community states that the Towns' assertion that it did not define what the additional charge for "certain other service calls" would be is simply incorrect.[59] Community asserts that its stated policy, which is clearly stated in footnote six of the schedule of rates Community submitted to the Towns, and of which the Towns should be aware, is to charge for wiring service calls if a subscriber tampers with the wiring or negligently damages the wiring.[60]

20. Section 623(f) of the Cable Act provides that an operator may not charge a subscriber for "any service or equipment that the subscriber has not affirmatively requested by name."[61] It further specifies that a "subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment." This prohibited billing practice is referred to as negative option billing. In *Comcast Cablevision,* the

[51] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("*Cable Act")*.

[52] *Id.* at 16. *See Rate Order,* 8 FCC Rcd at 5907.

[53] *Id.* at 16.

[54] Opposition at 5.

[55] *Id.*

[56] *Id.* at 6. *See Comcast Cablevision,* 10 FCC Rcd 2106 (1995).

[57] *Id.*

[58] Reply at 5. *See Comcast Cablevision,* 10 FCC Rcd at 2109.

[59] *Id.*

[60] *Id.* at 5-6.

[61] 47 U.S.C. § 543(f).

Commission determined that the operator did not violate the prohibition against negative option billing when it restructured and began charging subscribers separately for an existing wire maintenance service plan.[62] The Commission held that the operator's separate itemization of this charge on subscriber bills simply complied with Commission rules requiring unbundling and did not constitute negative option billing.[63] The Commission pointed out that subscribers continued to receive the same level of service before and after the operator had unbundled its equipment rates.[64] Based on Community's description of the restructuring and the unbundling in connection with home wiring maintenance, the circumstances are similar to that found in *Comcast Cablevision.* In the instant case, there was no significant change in the service provided to its subscribers and the negative option billing provision is not implicated. Consequently, the Towns' rejection of the home wiring maintenance charge was not warranted.

D. Permitted Charge for Remotes.

21. Community also states that in the January rate order the Towns deleted all 73 hours entered by Community in its Form 1205 as Total Maintenance/Service Hours for remotes.[65] It states that the Towns believe there is no reason why Community would spend any time actually repairing remote control devices and that Community was unable to provide verification or substantiation regarding the 73 hours.[66] Contrary to the Towns' assertion that Community was unable to provide verification or substantiation regarding the 73 hours, Community states that it provided ample justification regarding the hours.[67] It states that 73 hours were spent on remotes, but that no time was spent on remotes pursuant to installation or trouble calls from subscribers.[68] Community explained that 73 hours were required not for repairing remotes but for programming and handling them before they are issued to subscribers.[69] Community argues that the Commission should find that the Towns unreasonably rejected the 73 hours entered by Community for time spent on remotes and that the Towns misinterpreted the Total Maintenance/Service Hours category as being limited only to repairs.[70]

22. In opposition, the Towns state that Community failed to provide verification or substantiation regarding the 73 hours, and they also state that Community admitted that it spends no time at all servicing or maintaining its nonaddressable converters.[71] The Towns assert that deleting the 73 hours resulted in a revised figure for Calculating Total Equipment and Installation Costs of $2.735 and as a result, the Towns assert that the monthly permitted charge for remotes should be $.12 per month, rather than the permitted charge calculated at $.14 per month.[72]

23. Community replies that the 73 hours listed were fully supported and that the Towns have nothing to challenge Community's showing other than to express a vague form of disbelief.[73] Moreover,

[62] *Comcast Cablevision,* 10 FCC Rcd 2106 (1995).

[63] *Id.*

[64] *Id.*

[65] Appeal Petition at 17.

[66] *Id.*

[67] *Id.* at 18.

[68] *Id.*

[69] *Id.* at 19.

[70] *Id.*

[71] Opposition at 7.

[72] *Id.*

[73] Reply at 6.

Community asserts that not only are the Towns not permitted to substitute zero hours on line B of Form 1205, Schedule C, but Community would have been in violation of the Commission's rules if it had not incorporated the hours required for maintenance of remotes on Form 1205.[74]

24. Community seeks to include the programming and handling of remotes in the actual cost calculations for the installation and maintenance of customer premises equipment. Under Commission rules, equipment basket costs are limited to the direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment.[75] We agree with Community that providing customer service for equipment does not only involve repairing that equipment. Servicing of customer equipment can also be defined to include programming and handling of subscriber remote controls.[76] Making a remote control device work efficiently and effectively would be the objective in providing proper installation and maintenance. Proper programming of a remote is a necessity. Therefore, the programming of a remote is property classified as installation and maintenance and hours spent providing such service may be considered and calculated when compiling service hours. Since Community states that the programming and handling of remotes were not recovered in programming service rates, recovery of such costs through installation and maintenance calculations is appropriate. We remand this issue to the Towns.

E. Refund Liability With Undercharges for Equipment.

25. Community states that it has been charging and continues to charge $0.07 less for converters than its maximum permitted charge and that its non-addressable converter monthly charge is $0.01 less than the maximum permitted rate.[77] However, Community asserts that nowhere in the rate order do the Towns permit Community to offset any refund liability by these equipment undercharges.[78] Community argues that the Commission has specifically held that local franchising authorities must permit operators to offset refund liability by equipment undercharges.[79]

26. To not allow cable operators to factor in equipment charges could result in an operator being required to make a rate reduction that is greater than the maximum reduction required under application of the benchmark approach.[80] This analysis is consistent with the view that "the cable operator must make prospective billing adjustments to refund overcharges and offset any undercharges in a reasonable manner."[81] Moreover, the Commission has determined that a franchising authority must offset or reduce any refunds it may order by the difference between the actual equipment rates that an operator charged and the maximum permitted rates that it could have charged during the period of review.[82] Therefore, we remand this issue to the Towns.

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[74] *Id.*

[75] *See* 47 C.F.R. § 76.923(c). *See also TCI Cablevision of St. Louis, Inc,* 12 FCC Rcd 15287 (CSB 1997). We note that Form 1205 may be used to update permitted regulated equipment and installation charges based on equipment basket costs.

[76] *Id.*

[77] Appeal Petition at 19.

[78] *Id.*

[79] *Id.* at 20.

[80] *See Third Order on Reconsideration,* 9 FCC Rcd at 4353.

[81] *Id.*

[82] *See Community TV Corporation,* 10 FCC Rcd 2327 (CSB 1995).

F. Increase in Rates Without Prior Town Review and Approval.

27. Community states that the Towns ordered Community not to increase the BST rates or related equipment and installation rates without prior approval of the Towns.[83] Community requests that the Commission instruct the Towns that Commission regulations permit certain increases, namely increases in franchise fees and FCC regulatory fees to be passed along to subscribers without prior local franchising authority approval.[84]

28. Increases in basic rates attributable to increases in franchise fees and FCC regulatory fees are not subject to the prior approval requirements for proposed rate increases set forth in Section 76.933(a)-(c) of the Commission's rules.[85] Commission rules permit operators to pass through such fees as external costs on 30 days' notice.[86] Franchise fees, in particular, are set by the franchising authority, which should be aware of and sensitive to the fees' impact on subscribers rates. Prior regulatory review of franchise fees is less necessary from a consumer protection standpoint than it is for other categories of external costs.[87] Community may adjust its rates to reflect increases in such fees on 30 days notice.

IV. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED** that the Appeals of Community TV Corporation d/b/a The Americable Group from Rate Orders by the Local Franchising Authorities for the Towns of Amherst, Litchfield, Merrimack, and Milford, New Hampshire **ARE GRANTED** as provided herein and the Rate Orders **ARE REMANDED** for further consideration consistent with this Memorandum Opinion and Order.

30. 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

John B. Norton
Deputy Chief, Policy Division
Media Bureau

[83] Appeal Petition at 23.

[84] *Id.* at 24.

[85] *Fourth Order on Reconsideration,* 9 FCC Rcd 5795 (1994).

[86] *See Thirteenth Order on Reconsideration*, 11 FCC Rcd at 432.

[87] *Id.*