

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

In the Matter of	)	
	)	
MCC Iowa, LLC dba Mediacom	)	CSB-A-0681
	)	
Appeal of Local Rate Order of	)	
the City of Iowa City, Iowa	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 21, 2004**

**Released: January 22, 2004**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. MCC Iowa, LLC dba Mediacom (“Mediacom”), has filed an appeal of the local rate order resolution adopted by the City of Iowa City, Iowa (the “City” or “Iowa City”) on September 24, 2002. Mediacom seeks review of the rate order reducing the Form 1240 maximum permitted basic service tier (“BST”) rate calculated by Mediacom for the rate year commencing August 1, 2002, from \$15.99 to \$14.46 and further limiting Mediacom’s approved BST rate to \$13.91. For the reasons set forth herein, we deny the appeal, in part, and regarding a particular issue, we remand the rate order for further proceedings.

**II. BACKGROUND**

2. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.<sup>1</sup> In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a reasonable basis for that decision exists.<sup>2</sup> The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules.<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

<sup>1</sup> See 47 C.F.R. § 76.944; 47 U.S.C. § 543(b)(5)(B).

<sup>2</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5731-32 (1993) (“Rate Order”); 9 FCC Rcd 4316, 4346 (1994) (“Third Reconsideration Order”).

<sup>3</sup> *Id.*

decision on appeal.<sup>4</sup>

3. An operator seeking to justify its existing or proposed rates for the basic service tier or for equipment and installation bears the burden of demonstrating that the rates conform with our rules.<sup>5</sup> A franchising authority may direct the operator to provide supporting information and should permit the cable operator an opportunity to cure defects in its filing or file supplemental information considered necessary by the franchising authority.<sup>6</sup> If after reviewing an operator's rate forms and any additional information submitted, the franchising authority determines that the operator's rates exceed the maximum permitted rate ("MPR"), it may prescribe a rate different from the proposed rate or order refunds, provided that, after having given the operator an opportunity to participate, it affirmatively demonstrates in its written decision why the operator's rate or rates are unreasonable and any prescribed rate is reasonable.<sup>7</sup> If the local franchising authority does not dispute the basis for the figures presented in a cable operator's filings or has not discovered any mathematical errors in the form, the franchising authority should approve the operator's MPR as calculated in the form.<sup>8</sup>

4. In the rate filing in this case, Forms 1240 and 1235 are at issue. Operators using the annual rate adjustment method submit their rate justifications on FCC Form 1240. Form 1240 also establishes an MPR. These rate adjustments reflect inflation, changes in the number of regulated channels offered, and changes in certain external costs. External costs include the following categories of costs: state and local taxes specifically applicable to the provision of cable television service; franchise fees; costs of complying with franchise requirements; retransmission consent fees and copyright fees incurred for the carriage of broadcast signals; other programming costs; and Commission regulatory fees.<sup>9</sup> FCC Form 1235 allows cable operators to justify rate increases related to significant capital expenditures used to improve rate-regulated services.<sup>10</sup> This option is extended only in cases of significant upgrades requiring added capital investment, such as bandwidth capacity and conversion to fiber optics, and for system rebuilds.<sup>11</sup> Normal improvements and expansions of service remain subject to the usual rate adjustments allowed by filing FCC Form 1240.<sup>12</sup> Cable operators that incur increases in operating costs associated with a significant network upgrade will be permitted to charge additional rates as justified by their FCC Form 1235 filings.

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<sup>4</sup> *Id.*

<sup>5</sup> 47 C.F.R. § 76.937(a).

<sup>6</sup> See *Third Reconsideration Order*, 9 FCC Rcd at 4347-48.

<sup>7</sup> 47 C.F.R. § 76.936; see *Falcon Telecable*, 15 FCC Rcd 52, 54 (CSB 1999); *Ultracom of Marple, Inc.*, 10 FCC Rcd 6640, 6641-42 (CSB 1995); *TCI-TKR of Northern Kentucky Inc.*, 11 FCC Rcd 17353, 17365 (CSB 1996).

<sup>8</sup> See *A-R Cable Services-ME Inc.*, 10 FCC Rcd 1783, 1784 (CSB 1995).

<sup>9</sup> 47 C.F.R. § 76.922(c) and (f).

<sup>10</sup> See *Bresnan Communications*, 15 FCC Rcd 12893, 12894 (CSB 2000).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

### III. DISCUSSION

#### A. Reducing BST and Maximum Permitted Rates

5. Mediacom objects to the City's determination that its BST rate should be limited to \$13.91. It seeks to charge the operator selected, actual BST rate of \$14.99.<sup>13</sup> It states that the franchising authority may not compel a cable operator to charge an actual BST rate that is less than the MPR justified on the official rate form, but that is what Iowa City has done by limiting Mediacom's approved BST rate to \$13.91.<sup>14</sup> Mediacom asserts that it clearly intended to charge \$14.99, and justified that proposed BST rate, since its Form 1240 established Mediacom's maximum permitted Form 1240 BST rate at \$15.99.<sup>15</sup> Moreover, Mediacom states that in establishing the operator selected rate of \$14.99, it first looked to the Form 1240 MPR to justify the actual rate implemented.<sup>16</sup> Mediacom states that it recognized that regulations allow for consideration of the Form 1235 add-on if the Form 1240 MPR is used fully in determining the actual rate.<sup>17</sup> Mediacom argues, however, that although it allocated a portion of its selected rate to a Form 1235 system upgrade charge that subsequently was disallowed, that allocation does not in any way justify Iowa City's attempt to limit Mediacom's approved rate to \$13.91.<sup>18</sup>

6. To further support its argument, Mediacom cites *Adelphia Communications (Orchard Park)*,<sup>19</sup> which it states concludes that a cable operator is entitled to recover its full MPR. Mediacom asserts that *Adelphia Communications* involved a situation in which an operator that had elected not to set its MPR at the highest possible level, by leaving some its prior year true-up<sup>20</sup> unclaimed, initially was ordered to reduce its actual BST rate below the rate the operator could have justified had it not held some of its true-up in reserve, but the Commission concluded that the operator should have been credited with as much of its previously unclaimed true-up as necessary to justify its actual rate.<sup>21</sup> Mediacom asserts that, as in *Adelphia Communications*, Iowa City should have credited Mediacom with as much of its

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<sup>13</sup> Appeal Petition at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See *Bresnan Communications Company (Bay City)*, 13 FCC Rcd 19615 (CSB 1998); 14 FCC Rcd 15230 (CSB 1999).

<sup>18</sup> *Id.* at 4. Mediacom indicates that it initially sought to justify its actual BST rate of \$14.99 by referring to a system upgrade charge of \$1.08 which it believed was filed and approved. However, Mediacom learned that the Form 1235 on which it relied for a portion of its proposed rate was withdrawn by the system's previous owner, and had not been reviewed or approved by Iowa City.

<sup>19</sup> *Adelphia Communications (Orchard Park)*, 17 FCC Rcd 13729 (EB 2002).

<sup>20</sup> As part of the annual rate change, the Commission's rules include a "true-up" mechanism which permits an operator to correct projected cost changes with actual cost changes associated with external costs, inflation, and the number of regulated channels. The true-up requires operators to decrease their rates or permits them to increase their rates to adjust for over-or-under estimations of these cost changes. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration*, 11 FCC Rcd 388, 420-21 (1995).

<sup>21</sup> Appeal Petition at 3.

unclaimed Form 1240 MPR as necessary to avoid or minimize any reduction in actual rates.<sup>22</sup>

7. A franchising authority should not require the operator to set its operator selected rate at a level less than the MPR.<sup>23</sup> Instead, the franchising authority should allow the operator to charge up to the MPR approved in the most recent rate order. An operator is not required to raise its rates to the maximum permitted level and may voluntarily charge less than the MPR.<sup>24</sup> A franchising authority, however, is permitted to disapprove of an operator's MPR provided that there is sufficient explanation given for the disapproval.

8. With regard to the add-on amount included by Mediacom in its calculation, in *Bresnan Communications Company* ("*Bresnan*"), we characterized the FCC Form 1235 add-on as a yearly amount based on an operator's actual costs for upgrading its system.<sup>25</sup> Where the benchmark rate does not provide sufficient revenue to attract capital for upgrades because of unusual costs associated with capital improvement, the network upgrade add-on provides the ability to attract the capital needed for the upgrade. It is not a projected amount and is not subject to true-up through the FCC Form 1240.<sup>26</sup> An operator is required to use all of its FCC Form 1240 MPR for purposes of determining its actual rate.<sup>27</sup> The requirement that an operator fully use its benchmark rate prior to recovering the network upgrade add-on is consistent with the view that it is only to be used if the benchmark rate alone is insufficient.<sup>28</sup> Mediacom intended for the add-on amount to be included here, but circumstances prevent its consideration.

9. The circumstances of the filing of FCC forms in this case are not altogether clear. It appears that although Mediacom duly submitted its FCC Form 1240, it never filed an FCC Form 1235 and it tried to justify a rate based in part on an FCC Form 1235 that was never filed. Mediacom acknowledges in its appeal petition that the FCC Form 1235 filing associated with its predecessor was withdrawn, that the add-on amount of \$1.08 was never approved by the City, and that Mediacom did not separately file an FCC Form 1235. Consequently, Mediacom cannot attribute a portion of its actual BST rate to that form. It appears that the City determined that Mediacom's actual rate should be reduced by \$1.08 to \$13.91 because the add-on amount was never approved. However, rejection by the City of the FCC Form 1235 justification does not allow the City to reduce Mediacom's actual rate if Mediacom's actual rate is no more than its MPR as justified by its FCC Form 1240. The City made other adjustments to Mediacom's Form 1240 MPR, which could reduce Mediacom's MPR below its actual rate. But the City cannot order reductions in Mediacom's actual rate based on the FCC Form 1235 error or those other adjustments unless the resulting MPR is less than Mediacom's actual rate.

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<sup>22</sup> *Id.*

<sup>23</sup> See *TCI Southeast Mississippi*, 10 FCC Rcd 8728, 8730 (CSB 1995); *Sammons Communications of New Jersey, Inc.*, 11 FCC Rcd 17246, 17253-54 (CSB 1996).

<sup>24</sup> See *A-R Cable Services-ME Inc.*, 10 FCC Rcd 1783, 1784 (CSB 1995).

<sup>25</sup> See *Bresnan Communications Company*, 14 FCC Rcd 15230, 15231 (CSB 1999).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

## B. Amortization of Annual PEG Operating Cost Payments

10. In addition, Mediacom argues that its MPR was reduced as a result of the consultant's recommendations to reduce Mediacom's pass-through of annual PEG operating support payments by extending the period over which these payments would be recovered from one year to 84 months.<sup>29</sup> Mediacom asserts that the PEG payments are intended "to carry out the day-to-day operations of public access and community programming," and no precedent exists for amortization of annual operating subsidies beyond the 12 months of the current rate year.<sup>30</sup> Further, Mediacom points out that although Mediacom's predecessor elected to amortize such payments over a longer period of time, that fact does not bind Mediacom to follow a similar approach.<sup>31</sup> Mediacom argues that the Commission has stated that a regulator could require amortization where "one-time costs" or "large capital expenditures are involved" in order to avoid rate shock to subscribers, however, in this case there is no "one-time cost" or "large capital expenditure."<sup>32</sup>

11. We agree. Exhibit B of Mediacom's appeal petition is an excerpt from the Franchise Agreement between the City and Mediacom. The Agreement provides for annual payments to carry out the day-to-day operations of PEG programming. Commission rules do not require amortization of such payments. Mediacom states that it expenses this payment over 12 months. This is proper treatment of the costs of day-to-day operations. Therefore, with respect to this issue, Mediacom's appeal is granted.

## C. Imposing Franchise Costs on Subscribers Outside of Franchise Area

12. Mediacom asserts that the consultant's report allocates a portion of certain public, educational, or governmental ("PEG") operational costs to subscribers living outside Iowa City.<sup>33</sup> Mediacom states that the RW Report estimates that approximately 7,900 subscribers living outside of Iowa City have the ability to view Iowa City's PEG programming, and consequently calculates a pro-rata reduction in Mediacom's external cost pass-through of PEG expenses specifically mandated by the Iowa City franchise.<sup>34</sup> Mediacom asserts that PEG costs that are franchise-imposed costs in Iowa City would not qualify as franchise-imposed costs in the surrounding communities, making recovery of such costs impossible.<sup>35</sup> Mediacom states that this action has the effect of further reducing its MPR.<sup>36</sup>

13. In the *Rate Order*, we determined that external costs include franchise-imposed costs, *i.e.*, the "costs of satisfying franchise requirements, including costs of satisfying franchise requirements for local, public, educational, and governmental access channels."<sup>37</sup> Thereafter, the Commission clarified

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<sup>29</sup> Appeal Petition at 5.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* See *Thirteenth Order on Reconsideration*, 11 FCC Rcd 388 (1995).

<sup>33</sup> Appeal Petition at 6.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See *Rate Order*, 8 FCC Rcd at 5790.

what constituted franchise-imposed costs by concluding that operators should be permitted to include increases in franchise requirement costs that the operator would not have incurred in the absence of the franchise requirement.<sup>38</sup> Such increases include both new requirements that the franchising authority imposes and increases in the cost of complying with existing requirements.<sup>39</sup> Our rules permit external cost treatment for increases in the costs of satisfying franchise requirements for (a) PEG access channels, (b) PEG access programming, and (c) customer service standards and technical standards that exceed federal requirements.<sup>40</sup> Because these costs are largely beyond the control of the cable operator, the Commission has concluded that such costs should be passed on to subscribers.<sup>41</sup> However, the mere presence of a franchise requirement does not automatically result in a cable operator's right to recover its value as an external cost.<sup>42</sup>

14. Mediacom expresses concern that it will be unable to recover franchise-imposed PEG costs from subscribers living in surrounding communities, outside of Iowa City. As a result, it seeks to pass these costs solely to its subscribers living in Iowa City. Mediacom is correct in its view that these costs should not be shifted, but borne by subscribers within the Iowa City community. PEG programming mandated by Iowa City may have no relationship or benefits for subscribers in other communities. PEG channels are intended to provide community-specific information, such as bulletin boards for local activities, local civic meetings, and local governmental activities.<sup>43</sup> We have no reason to believe that those subscribers in other communities have requested the PEG programming received by them. Yet according to Iowa City, these residents should be responsible for their share of these PEG

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<sup>38</sup> See *Thirteenth Order on Reconsideration*, 11 FCC Rcd 388, 441 (1995).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 442. See *Harron Communications Corp.*, 15 FCC Rcd 7901, 7904 (CSB 2000).

<sup>43</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd 26901, 26973 (2002).

payments. Under these circumstances the proper result is to place the obligation of such payments only on Iowa City subscribers, not subscribers from outside communities.<sup>44</sup> Mediacom's appeal is granted with respect to this issue.

#### IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that the Appeal of Mediacom from a Rate Order of the City of Iowa City, Iowa **IS GRANTED** the extent indicated herein.

16. 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

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<sup>44</sup> See *Falcon Cablevision (Malibu, California)*, 14 FCC Rcd 15447 (CSB 1999).