

TRUCKEE CABLE FRANCHISE REVIEW

REASON FOR INVESTIGATION

The Nevada County Grand Jury received a citizen complaint regarding the Town of Truckee's handling of its regulatory powers of the cable system franchise it has granted to USA Media.

PROCEDURE FOLLOWED

An interview was conducted with the Town Manager. Truckee's Cable System Regulatory Ordinance (Ordinance), its Cable System Franchise Agreement (Agreement), and related documents were reviewed.

BACKGROUND

The 2000-2001 and 2001-2002, Nevada County Grand Juries recommended that the County conduct required audits on utility franchises operating within the county. Subsequently, a preliminary review by C2 Consulting Services, Inc. dated October 30, 2002 showed that Nevada County was owed additional franchise fees from the cable systems being operated in unincorporated areas of the County by USA Media.

FINDINGS

1. Truckee's Ordinance is incorporated by reference into its Agreement with USA Media.
2. Section 8.5 of the Ordinance deals with subscriber complaints and disputes. If a customer complaint about cable company service remains unresolved, this section *allows the subscriber to request* the appointment of a hearing officer selected by the Town Manager. The costs of the hearing, if any, are to be paid by USA Media.
3. Section 15.2 of the Ordinance, dealing with the procedure to remedy franchise violations, refers to an administrative public hearing to be held before a hearing officer designated by the Town Council. Section 2.7 of the Agreement also deals with the procedure to remedy franchise violations, and would prevail if any conflict exists between it and the Ordinance. The Agreement, while specifically calling for consistency with the procedures called for in section 15 of the Ordinance, states: "Breaches of customer service requirements shall not be considered on an individual basis."

4. In November 2002, the Town of Truckee established rules of procedure for conduct of an informal hearing regarding a cable television subscriber complaint.
5. Section 9.1 of the Ordinance gives Truckee the right to conduct an independent financial audit. Should the audit indicate a franchise fee underpayment of two percent or more, USA Media shall pay for the audit.
6. Section 11.1 of the Ordinance gives Truckee the right to request a copy of the proof of performance tests conducted by USA Media. These tests establish that the cable system meets minimum Federal Communication Commission (FCC) technical standards.
7. Section 13 of the Ordinance requires USA Media to maintain a complete set of records including a record of all service calls for the preceding two years, a set of cable system drawings, and a complaint record. The Town of Truckee has the right to request:
 - a) a summary of service calls, either on a one-time basis or monthly, identifying the number, general nature, and disposition of such calls;
 - b) a semi-annual report of customer complaints including number and classification of such complaints;
 - c) an annual written report summarizing the previous year's Cable System development activities;
 - d) a full set of drawings showing locations of Cable System installations within the Town and updated portions when applicable.
8. Section 13.4 of the Ordinance allows Truckee to require that USA Media conduct a Subscriber Satisfaction Survey as often as once every two years.
9. Section 14.1 of the Ordinance allows Truckee to call for a public Biannual Review of system performance and quality of service.
10. The effective date of the Agreement is February 1999. The Town of Truckee conducted their first Biannual Review on April 3, 2003.
11. Prior to March 2003, Truckee did not avail itself of any of the rights specified in findings 5 through 8, above.

CONCLUSIONS

1. The Town of Truckee failed to call for a Biannual Review at its first opportunity in 2001 nor has it availed itself of the various cable system reports it had the right to request. Without this information, Truckee cannot fully substantiate that cable system subscribers are receiving the high standard of service and performance called for by the Ordinance and Agreement.

2. Truckee's relative inaction in implementing the Ordinance makes it difficult to evaluate the validity of individual subscriber complaints.
3. The results of Nevada County's investigation referenced in this report's Background, make it prudent for the Town of Truckee to conduct an independent audit to assure that it is receiving all cable franchise fees generated within the Town's boundaries.
4. Neither Section 15.2 of the Ordinance nor Section 2.7 of the Agreement, which deal with procedures to remedy franchise violations, appear in any way to modify Section 8.5 of the Ordinance dealing with subscriber complaints. Therefore, it is concluded that Truckee's detailed rules of procedure regarding set up and conduct of the hearing to resolve a subscriber complaint should logically comply with Section 8.5 of the Ordinance.

RECOMMENDATIONS

The Town of Truckee should:

1. Strengthen its commitment to ensure that cable system subscribers are receiving the service and performance promised in the Agreement by more actively utilizing the powers granted to Truckee in the Ordinance.
2. Conduct independent financial audits to assure that it is receiving all franchise fees due.
3. Review procedures relative to resolving customer complaints to make sure they are consistent with the Ordinance and Agreement.

REQUIRED RESPONSE

Town of Truckee, Town Council by August 5, 2003

Ted Owens, Mayor
Josh Susman, Vice Mayor

Councilmembers:
Ron Florian
Craig Threshie
Beth Ingalls



Stephen L. Wright, Town Manager
Patt Osborne, CMC, Town Clerk
J. Dennis Crabb, Town Attorney
Dan Boon, Chief of Police
Tony Lashbrook, Community Development
Dan Wilkins, Public Works Director/Engineer

*Follow-up
from Steve Dickheads*

June 20, 2003

Honorable Ersel L. Edwards
Presiding Judge
Nevada County Superior Court
201 Church Street
Nevada City, California 95959

REC'D BY SUPERIOR COURT
DATE: 6-20-03
BY: *Ersel L. Edwards*

RE: Response to Grand Jury Report – Truckee Cable Franchise Review

Dear Judge Edwards:

This letter constitutes the response of the Town of Truckee to the Grand Jury Report concerning the Truckee Cable Television Franchise transmitted to the Town May 1, 2003. The response was reviewed and approved by the Town Council at their meeting of June 19, 2003. This response is prepared in accordance with the provisions of California Penal Code Section 933.05.

With regard to the Section entitled "Findings" the Town responds as follows:

The Town agrees that Findings 1-10 reflect the provisions of the ordinance. The Town agrees that as stated in Finding 11 the Town did not do those things set forth in Findings 1- 10. The Town disagrees with the implication contained in the Finding that its conduct was therefore somehow improper. As is more fully discussed below, the Town did not take such steps because there was no reason to do so, given the almost non-existent number of subscriber complaints received by the Town with regard to any of those issues.

With regard to the Section entitled "Conclusions" the Town responds as follows:

1. The Town did not call for a bi-annual review in 2001 because there was no apparent need to do so based upon the level of expressed community concern about cable franchise operations. In fact, as was explained to those who interviewed the Town Manager, system reviews were conducted by the Council on July 11, 2002, although it was not called a bi-annual review it served the same purpose.

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2. Truckee disagrees with the statement in Finding Number 2. The Town promptly and fairly evaluated all subscribers' complaints it received and resolved all but those of one individual. The Town made repeated attempts to resolve his issues, but was unable to do so due to the nature of the complaints and the complainant. The Town took all appropriate actions. The Town Council after fully considering the issues did not believe that monies should be expended to generate reports for the sake of generating reports.

3. Town staff has reviewed the cable system audit process used by Nevada County and its results. A proposal has been obtained from the same audit firm to conduct a financial audit of the Town cable system. That proposal will be presented to the Town Council for their consideration.

It should be noted however, that the audit conducted by Nevada County (with the exception of a property tax issue not applicable to Truckee) indicated minimal discrepancies.

On that issue there is a real question whether proceeding with an audit is cost effective. Ultimately however, that is a decision for the Town Council.

4. With respect to Conclusion Number 4, the Town respectfully disagrees with the conclusion. The procedures in question were adopted specifically to implement the provision of Section 8.5 (f) and does so. Allegations of franchise violations and subscriber complaints are treated differently for good reason. If a violation of the franchise is alleged that is between the Town and the franchisee, it could result in termination of the franchise. If a subscriber complaint is lodged it is between the subscriber and the franchisee with the Town appointing a hearing officer assigned to resolve the dispute and holding a cash security to insure that the complainant is compensated, if so ordered by the hearing officer.

With regard to Section entitled "Recommendations" the Town responds as follows:

1. The Town has, and will continue to, fulfill its objective to oversee operations of the USA Media Cable Franchise. To the extent that it is not merely a bureaucratic exercise and is warranted based upon the evidence, the Town will use its authority to ensure that system subscribers receive the service and performance required by the franchise ordinance and agreement.

Further Action Required: None

2. The Town Council will consider a proposal for a cable television system financial audit from the same firm that provided the audit for Nevada County. The Council will then decide whether or not to proceed with such an audit.

Further Action Required: Agendize item for Council discussion. To be completed within six months.

3. At the request of the Town Council the Town Attorney has reviewed the procedures for resolving consumer complaints. He has determined that there is no inconsistency. Should another such hearing be requested in the future the facts giving rise to the subscriber complaint will be reviewed to determine if modification to the hearing procedures are then appropriate.

Further Action Required: None

If there are any further questions please contact Steve Wright, Town Manger, at your convenience.

Respectfully submitted,



Ted Owens
Mayor

cc: Grand Jury Foremen
