Agenda Date: 4/28/10 Agenda Item: IIIG



STATE OF NEW JERSEY

Board of Public Utilities Two Gateway Center Newark, NJ 07102 www.nj.gov/bpu

CABLE TELEVISION

IN THE MATTER OF COMCAST OF SOUTH JERSEY,)
LLC (FRANKLINVILLE NORTH) FOR APPROVAL OF)
THE FILING OF FCC FORM 1240, AN ANNUAL)
UPDATING OF THE MAXIMUM PERMITTED RATE FOR)
REGULATED BASIC SERVICE USING THE OPTIONAL)
EXPEDITED RATE PROCEDURES)

ORDER ADOPTING STIPULATION

DOCKET NO. CR09100811

Joseph C. Lance, Senior Director, Eastern Division, Comcast Cable Communications, Inc., Oaks, Pennsylvania for Petitioner

BY THE BOARD:

On October 1, 2009 (revised on October 26, 2009 and on October 28, 2009), Comcast of South Jersey, LLC (Franklinville North) ("Petitioner") filed Federal Communications Commission ("FCC") Form 1240, Docket Number CR09100811, seeking approval by the Board of Public Utilities ("Board") for an annual rate adjustment in its maximum permitted rate resulting from an adjustment for inflation, programming costs and copyright fees pursuant to the Cable Television Consumer Protection and Competition Act of 1992, 47 <u>U.S.C.</u> § 543 <u>et seq.</u>, and provisions of the New Jersey Cable Television Act, <u>N.J.S.A.</u> 48:5A-1 <u>et seq.</u>

The Board, at its public meeting on January 10, 1996, in Docket Number CX95120636, approved the implementation of Optional Expedited Rate Procedures for the processing of certain filings made with the Office of Cable Television. The intended purpose of these procedures is to grant final rates as quickly as possible to any cable company that chooses this process. In the spirit of cooperation based on the principles of Alternate Dispute Resolution, the discovery content is limited, thereby reducing the timeframe for settlement.

Petitioner chose to pursue its filing with the Board through the approved procedures. To that end, a pre-transmittal conference was held on October 21, 2009, and attended by representatives of the Petitioner, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") and Board Staff. The Petitioner agreed to waive its Office of Administrative Law ("OAL") litigation rights for this matter. It should be noted that the Petitioner's waiver was a knowing, voluntary and intelligent waiver of its litigation rights at the OAL and that the waiver did not constitute a circumvention of the FCC rules nor did it affect Petitioner's right to appeal in that forum.

The Petitioner notified its customers of the rate decrease by way of a newspaper announcement informing them of their opportunity to submit written comments to the Board for a period of thirty days. The notice appeared in the <u>Gloucester County Times</u> on November 4, 2009. No comments or resolutions were received as a result of this public notice.

After review by Staff and Rate Counsel of the supporting documentation, schedules and other discovery requests, a settlement conference was held on November 6, 2009. On January 6, 2010, the parties entered into a Stipulation of Settlement.

The Board has reviewed the Stipulation of Settlement and <u>FINDS</u> it to be reasonable, in the public interest and in accordance with the law. Therefore, the Board <u>HEREBY ADOPTS</u> the Stipulation of Settlement (attached hereto) as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

The Board <u>FURTHER ORDERS</u> that, subject to the ongoing review before the FCC, should these cable systems, or any part thereof, merge and/or migrate to another system, be upgraded and/or rebuilt, its ownership or control be otherwise sold or transferred to another entity, the basic service tier rate that will be eliminated or superseded as a result of the merger, migration, upgrade, rebuild, sale or transfer must be "trued-up" [47 <u>C.F.R.</u> § 76.922 (e) (3)]. The final true-up for the affected systems, or any parts thereof, should be calculated on FCC Form 1240 and begin where the last true-up period ended on its prior FCC Form 1240. This true-up calculation should be filed with the Board when all the affected subscribers are being charged the rate resulting from the merger, migration, upgrade, rebuild, sale or transfer and may be filed in conjunction with the annual rate adjustment cycle (Form 1240) established as a result of said merger, migration, upgrade, rebuild, sale or transfer.

The cable systems, or any part thereof, may be subsequently deregulated as a result of a finding by the Board, the FCC or other party of competent jurisdiction that these systems or any portion thereof, subject to effective competition. Should that occur, the last basic service rate established as a result of a prior FCC Form 1240, or such subsequent rate calculation method as may be heretofore adopted by the Board, the FCC or any other party of competent jurisdiction, prior to the deregulation of any rate that is now or may in the future be subject to the Board's jurisdiction, must be trued-up for the period of time that the affected rates were subject to regulation by the Board.

The above referenced true-up procedure does not exclude any cable system party to this order.

BOARD OF PUBLIC UTILITIES

LEE A. SOLOMON

PRESIDENT

JEANNE M. FOX COMMISSIONER

NICHOLAS ASSELTA COMMISSIONER

JØSEPH L. FIORDALISO

ELIZABETH RANDALL COMMISSIONER

ATTEST:

KRISTI IZZO SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public

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IN THE MATTER OF COMCAST OF SOUTH JERSEY, LLC (FRANKLINVILLE NORTH) FCC FORM 1240 USING THE OPTIONAL EXPEDITED RATE PROCEDURES

DOCKET NUMBER: CR09100811

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Dept. of Law & Public Safety
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IN THE MATTER OF COMCAST OF)	CABLE TELEVISION
SOUTH JERSEY, LLC'S)	10 JAM - 6 AM
(FRANKLINVILLE NORTH) FILING)	and the second
OF FCC FORM 1240, AN ANNUAL)	STATE OF NEW JERSEY
UPDATING OF THE MAXIMUM)	BOARD OF PUBLIC UTILITIES
PERMITTED RATE FOR REGULATED)	
CABLE SERVICES USING THE)	
OPTIONAL EXPEDITED RATE)	
PROCEDURES)	BPU DOCKET NUMBER: CR09100811
		STIPULATION OF FINAL RATES

The undersigned parties, as a result of a review of the Federal Communications Commission ("FCC") Form 1240 and timely filed public comments in this matter hereby stipulate to the following findings of fact and conclusions of law for consideration by the Board of Public Utilities ("Board"); and,

As part of the Optional Expedited Rate Procedures (Approved January 12, 1996, Docket No. CX95120636), Comcast of South Jersey, LLC (Franklinville North) ("Petitioner") agreed to waive the Company's litigation rights at the Office of Administrative Law ("OAL") in this proceeding. It should be noted that Petitioner's waiver was a knowing, voluntary and intelligent waiver of its litigation rights at the OAL and that the waiver did not constitute a circumvention of the FCC rules nor did it affect the Company's right to appeal in that forum.

WHEREAS, the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), codified at 47 U.S.C. § 543 et seq., (the "Federal Act"), classified the delivery of cable television services into two separate rate regulated categories: (i) "basic service" (consisting primarily of "off-the-air" and public, educational and governmental channels) and associated equipment and installation and (ii) cable programming services ("CPS") (consisting of other tiers of channels) and associated equipment; and

WHEREAS, under the Federal Act, basic service is regulated by the "franchising authority"; and

WHEREAS, under the provisions of the New Jersey Cable Television Act ("New Jersey Act"), N.J.S.A. 48:5A-1 et seq., the franchising authority is the Board; and

WHEREAS, the Federal Act required the FCC to issue regulations governing the standards to be used by franchising authorities in regulating basic service rates; and

WHEREAS, under the regulations adopted March 30, 1994, 47 <u>C.F.R.</u> § 76.900 <u>et seq.</u>, a cable operator may adjust its rates by electing the annual rate adjustment system under the regulations adopted September 15, 1995 (47 <u>C.F.R.</u> § 76.922) by filing a Form 1240 <u>and</u> a Form 1205 on the same date; and

WHEREAS, on October 1, 2009, revised on October 26, 2009 and on October 28, 2009, Petitioner, serving the Borough of Elmer and the Townships of Elk and Woolwich filed a Form 1240, Docket Number CR9100811 with the Board seeking approval of inflation and external cost adjustments for a total decrease in the Maximum Permitted Rate ("MPR") of 3.3% for the rate cycle of January 1, 2010 to December 31, 2010 for a rate decrease from \$11.11 to \$10.74, exclusive of franchise fees, which would result in a total decrease in the MPR for basic service of \$.37 per month. The Operator Selected Rate ("OSR") will be \$10.70 effective January 1, 2010 for the same rate cycle of January 1, 2010 to December 31, 2010. However, during this period, if Petitioner chooses to decrease the OSR, with proper notice to its subscribers and the Board, this decrease will not affect the established rate cycle; and

WHEREAS, the Board Staff ("Staff") and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), upon review of the FCC Form 1240, supporting documentation and schedules thereto agree that the proposed MPR and OSR rates are just and reasonable; and

WHEREAS, Staff, Rate Counsel and Petitioner have engaged in discussions of this matter; and

WHEREAS, Staff, Rate Counsel and Petitioner have concluded that the Company is entitled to the above-referenced adjustment which it seeks in its FCC Form 1240 filing;

NOW, THEREFORE, Staff, Rate Counsel and Petitioner hereby STIPULATE AS FOLLOWS:

- Petitioner notified its customers of the proposed MPR rate decrease via a newspaper announcement and has informed them of their opportunity to submit written comments for a period of thirty (30) days.
- The effective date for the decrease in the MPR for basic service due to inflation and external costs adjustments under Docket Number CR09100811 and the OSR is January 1, 2010.
- The rate cycle established under Docket Number CR09100811 is January 1, 2010 to December 31, 2010.
- 4. On September 14, 2006, in Docket Nos. CR05090826 (Toms River-Rebuild), CR05090827 (Crestwood Village/Cedar Bonnet Island), CR05110935 (South Jersey/Vineland-Vineland) and CR05110937 (South Jersey/Vineland-Franklinville South) (hereinafter the "Toms River/South Jersey Matters"), the Board issued Orders adopting Stipulations of Settlement among the Parties therein (the "Toms River/South Jersey Stipulations"), which, among other things, addressed the cost of programming pertaining to CN8, a Comcast affiliated channel, to be reported on Worksheet 7 Line 701 of the Form 1240. Specifically, the Toms River/South Jersey Stipulations provided that, for all "Comcast" affiliated rate districts in New Jersey, Line 701 on Worksheet 7 would be based upon rates of thirty-three cents (33¢), thirty-four cents (34¢) and thirty-

five cents (35¢) per subscriber per month for CN8 (excluding the Form1240's permitted 7.5% markup), and that these rates would be frozen for specific true-up and projected periods listed for each rate district in Exhibit B to the Toms River/South Jersey Stipulations (hereinafter, the "CN8 Agreement"). For convenience, a copy of the Toms River/South Jersey Stipulations' Exhibit B is annexed hereto as Attachment 1. It was further agreed in the Toms River/South Jersey Stipulations that for the period during which the CN8 rates shall be frozen at the above rates, such rates shall be deemed not unreasonable and that documentation in support of such rates and/or discovery requests relating to such rates shall not be necessary. Accordingly, and pursuant to the CN8 Agreement, as set forth in the Toms River/South Jersey Matters, the cost of programming pertaining to CN8 in the instant matters has been calculated at the agreed upon rate per subscriber per month in Worksheet 7 - Line 701 of the Form 1240¹. Comcast further agrees to include this paragraph in future Stipulations for all Comcast Form 1240 rate filings that include any true up or projected period subject to the CN8 rate freeze as indicated on Attachment 1.

- 5. The foregoing description of the CN8 Agreement is intended merely to summarize and in no way change the terms of the Agreement reached among the Parties and Approved by the Board with respect to the treatment of CN8 as set forth in the Toms River/South Jersey Matters.
- 6. In the event that a system listed in Attachment 1 changes its annual rate cycle, resulting in a concomitant change in the true-up and/or projected periods attributable to said system, the rate freeze periods set forth in Exhibit B to the Toms River/South Jersey Stipulations shall remain unchanged.
- 7. This stipulated rate decrease shall be subject to the approval of the Board and all revenues collected as a result of this adjustment shall be subject to refund, pursuant to the rules and regulations of the FCC as well as those of the Board if the Board finds this rate decrease to be unjustified in whole or in part or in any way implemented improperly.
- This Stipulation of Settlement resolves all issues raised by this filing which are the subject of the within matter.
- 9. The signatories agree that, except as expressly provided herein, this Stipulation has been made exclusively for the purpose of this proceeding and that the Stipulation contained herein, in total or by specific items, is in no way binding upon the parties in other proceedings before the Board or in other forums or jurisdictions, nor are the contents of this Stipulation, in total or by specific items, by inference, inclusion, or deletion, in any way to be considered or used by another party as any indication of the position of any party hereto on any issue litigated or to be litigated in other proceedings.

Petitioner chose not to include any programming costs for CN8 in the projected period for this instant matter.

This Stipulation contains terms, each of which is interdependent with the others and essential in its own right to the signing of this Stipulation. Each term is vital to the agreement as a whole, since the parties expressly and jointly state that they would not have signed the agreement had any term been modified in any way. Each party is entitled to certain procedures in the event that any modification is made to the terms of this Stipulation. That is, each signatory party must be given the right to be placed in the position it was in before the Stipulation was entered. Therefore, if any modification is made to the terms of this Stipulation, it is essential that each party be given the option, before the implementation of any new rate resulting from this action, either to modify its own position to accept the proposed changes, or to resume the proceeding as if no agreement had been reached.

The parties believe these provisions are fair to all concerned and therefore, they are made an integral and essential element of this Stipulation. This being the case, all parties expressly agree to support the right of any other party to this Stipulation to enforce all terms and procedures detailed herein.

DATED: //6/10

GLORIA J. FURLONG OFFICE OF CABLE TELEVISION

By: Supervising Administrative Analyst

RONALD K. CHEN, ESQ.
PUBLIC ADVOCATE OF NEW JERSEY

STEPHANIE A. BRAND, ESQ., DIRECTOR, DIVISION OF RATE COUNSEL

DATED: 1/6/24.

Ose Rivera-Benitez, Esq.
Assistant Deputy Public Advocate

COMCAST OF SOUTH JERSEY, LLC (FRANKLINVILLE NORTH)

DATED: 1/5/10

Dennis C. Linken, Esq. Stryker, Tams & Dill

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October 1, 2005	Contrast of New Jersey, LLC	Tons River Rebuild Crestwood/Cedar Bornel Island	SATING to \$40043 SATING to \$40043	16104-129104	10/01/05-9/30/04	MHZ6-120105	10/01/04-9/2005	101/06-12/21/06	1001/05-970/06	10102-120107	1001/06-03007	1/71/06-12/31/08	10/01/07-6/30/08	10109-129109	100108-82008
	Comcast of Long Beach Island, LLC	Long Beach Island	SECURE to BOOKS	16104-120104	10/01/00-9/30/04	1/01/05-12/21/05	10/01/04-930/05	101/08-12/31/06	100105-93006	1/01/02-12/21/07	100106-93007	1/01/06-12/21/06	10/01/07-0/30/06	16109-120109	100106-90008
	Compact of Central have Jensey, LLC East Windson West Windson	C. East Windsor West Windsor	100102 to 92000 100102 to 92000	10104-129104	10/01/05-930/04	1/01/06-12/21/05	1001/04-60005	101/06-12/31/06	1001/05-970/06	1/01/07-12/21/07	100100-02007 100100-02007	1,01,06-1231/06 1,01,06-1231/06	1001/07-82008	1/01/05-12/01/09	10/21/06-5/30/03
November 1, 2005	Compast of South Jersey, LLC	Vineland/Franklim/Ne South/Salem Vineland	11/01/02 to 10/31/03 11/01/02 to 10/31/03	201/04/1/21/05	116163 is 1631/84 116163 is 1631/84	20105-12106	11/01/04 to 10/51/06 11/01/04 to 10/51/06	21506.21407	11/01/26 to 10/31/05 11/01/26 to 10/31/05	21507-21408	11/01/06 to 1001/07 11/01/06 to 1001/07	21506-21403 21506-21403	11/01/07 to 10/01/08 11/01/07 to 10/01/08	215/05-21410	110108 to 1021/06
March 1, 2004	Correst of Wildwood, LLC	Gloucester City Maple Stade	120102-110003	801/04-5/21/05	120103-115504	90105-53106 90105-53106	12/01/04-11/50/05	601/06-50107 601/06-50107	1201/06-11/20/06	60107-59108 60107-59108	1201/06-11/2007	671/06-5/21/09 671/06-5/21/09	12/01/07-11/20/06	60106-59VI0 60106-59VI0	120106-110309
	Comcast of Avaion, LLC	Avaion	30103-22904	601/04-5/31/05	36104-27805	80105-431/06	3/01/05-2/28/06	50106-90103	301/06-2/28/07	80102-20108	3/01/00-2/25/09	601/06-501/09	301/06-22800	601/06-5/31/10	3010620810
Non-Pending Filings: Next Filing Date:	_1														
August 1, 2004	Comcast of Jensey City, LLC	Jerney City	80103-70104	11/01/04-10/21/06	80104-7/31/05	11/01/05-10/91/06	80105-75106	11/01/06/10/21/07	801/06/7/21/07	11/01/07-10/21/08	80107-7/31/06	11/21/06-10/21/9	80108-7/31/08	11/01/6-10/01/10	80108-72170
October 1, 2004	Comcast of Montrouth Courty, LLC	Monmouth Freshold	10/01/03-8/30/DH	10105-125105 10105-125105	10/01/04-030/05	1/01/06/12/21/06	10/01/05-93006	16167-129107	10/01/06-9/00/07 10/01/06-9/00/07	1/01/08-12/51/08	10/01/07-10/00/04	1/01/06-12/21/06	92029-920404	1/01/15-12/21/10 1/01/15-12/21/10	1001/06-03010
	Comcast of Octon Courts, LLC Concast of Butington, LLC	Ocean	10/01/05-920/04	10105-1231/05	10/01/04-930/05	1/01/06 12/21/06	10/01/05-9/30/09 10/01/05-9/30/09	10107-120107	1001/06/03/07	10108-1251/08	10/01/07-03/009	1/01/06-12/31/06	100108-92008 100108-92008	1,01/10-12/21/10	10/01/06-83/010
	Concast of Central New Jersey, LLC East Brunswick	Cast Branswick	10/01/05-9/30/04	10105-1231/05	10/01/04-9/30/05	1/01/06 12/21/06	10/01/06-9/2098	16167-129107	10/01/06/9/007	10108-120108	10/01/07-9/30/08	1,01/06-12/51/06	10/01/08-9/30/09	1,01/10.12/21/10	10/01/09-9/20/10
	Concast of Gloucester County, LLC	Cioucester	10/01/05-9/30/24	10105-125105	10/01/04-9/30/06	101/06/12/21/06	10/01/06-9/20/26	16167-129167	10/01/26-9/30/07	10108-129108	10/01/07-8/20/06	1/01/00-12/51/00	10/01/08-9/30/09	301/10-12/21/10	1001/08-970/10
	Concast of Garden Sale, L.P.	Garden State Camey's Point	10/01/05-02/0501	101/05-12/51/05	10/01/04-9/2005	1/01/06-12/21/06 1/01/06-12/21/06	90000-92/IODI	16167-120107	1001/06-93007	10108-120108	100107-03006	1/01/09-12/91/09 1/01/09-12/91/09	1001/06-90009	101/10-12/51/10	01/00/1/09-9/30/10
November 1, 2004	Consoli of Northwest New Jersey, LL Northwest Consols of Plansfeld, LLC Plansfeld	Planted Partheld	10/01/03-10/31/04	20105-10106	110104-100105	20106-121/00	11/01/05/10/01/06	20107-12106	110106-103107	201/06-1/21/06	11/01/62-10/31/08	20106-10110	1101/08-10/51/00	201/10/10/11/1	11/01/06-10/21/10
	Compast of South Jensey, LLC	Vineland Franklindle North Vineland Tumersville	MAY EOS - CONTOUT	20106-10106	110104-10/31/05	201105-151100	11/01/05-10/01/06	21507-21406	11/01/06-10/31/07 11/01/06-10/31/07	21508-214/08	11/01/07-10/21/08	275/06/274/10	110108-100108	215/10-214/1	11/01/08-10/21/10
		VinstandTranklin Township-8 towns	No True-us per mile cap settlement in 2001	21106-1/21/06	21106-193106	20106-10100	11/01/05/10/01/06	2115/07-274/08	110106-100101	2/15/06-2/14/09	11/01/67-10/31/98	215/06-2/14/10	11/01/08-10/31/08	215/10/214/11	11/01/09-19/21/10
	Compact of South Jensey, LLC	Pleasantville (East 1/East 2 / Cownbeach/Milantic City Pleasantville West/Multica	11/01/03-10/31/04	20105-10106	1101/04-1051/05	20106-15100	116105-100106	27507-27406	110100-100107	21508-21408	11/01/02-10/31/06	21508-21410	11/21/06-10/21/09 11/21/06-10/21/09	215/10-274/1	1101/08-1001/10
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November 30, 2004	Compast of Mercer County, LLC	Tremson	81/05/11/2004	30105-273806	12/01/04-11/20/05	3/01/06-2/28/07	12/01/05/11/00/06	30107-22806	12/01/06-11/02/07	3/01/08-2/28/09	12/01/07-11/20/06	3/01/09-2/28/10	12/01/06 11/30/09	347110-3/28/11	120106-110010
	Concast of Southeast Pernsyvana, I Lamberfelle Hopewell	, i Lambertville Hopewell	11/01/05/11/30/04	30105-27808	12/01/04-11/30/06	3/01/05-2/28/07	12/01/05-11/93/06	3/01/07-2/20/06	12/01/06-11/90/07	3/01/08-2/28/08	12/01/07-11/50/06	301/08-2/28/10	1201/06-11/20/06	301110-20811	120106-110010

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