



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

CABLE TELEVISION

IN THE MATTER OF CERTAIN COMCAST)
CABLE COMMUNICATIONS, LLC) ORDER
SUBSIDIARIES' RATE CHANGES UNDER)
AGGREGATE FCC FORM 1205 DETERMINING)
REGULATED EQUIPMENT AND INSTALLATION) BPU DOCKET NO. CR10030162
COSTS)

Dennis C. Linken, Esq., Stryker, Tams & Dill, LLP, for all Comcast Subsidiaries noted herein.

Jose Rivera-Benitez, Esq., Assistant Deputy Rate Counsel, for the Division of Rate Counsel
(Stefanie A. Brand, Esq., Director)

Anne M. Shatto, Deputy Attorney General, for the Staff of the Board of Public Utilities
(Paula T. Dow, Attorney General of New Jersey)

BY THE BOARD:

On March 1, 2010, Comcast Cable Communications, LLC Subsidiaries, as detailed on Attachment A, (collectively, "Comcast") filed a Company Level aggregate Federal Communications Commission ("FCC") Form 1205 with the Board of Public Utilities ("Board") for the purpose of adjusting its maximum permitted rates for regulated equipment and installation charges affecting all its regulated systems in the State of New Jersey pursuant to the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 543 et seq., and provisions of the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq. ("the Cable Television Act"). The Board is the local franchising authority in New Jersey and is certified to regulate basic service rates and associated equipment and installation charges. FCC Form 1205 is the FCC mandated form used by cable operators to update their regulated rates for equipment, such as, converters and remotes, and customer installations.

Pursuant to 47 CFR § 76.933(g)(2), the Board is required to issue a final rate Order within one year of a filing in order to preserve its ability to order customer refunds or prospective rate reductions if the rates to be implemented by Comcast are later found to be unreasonable.

BACKGROUND AND PROCEDURAL HISTORY

Comcast notified its customers of the rate changes by way of newspaper announcements informing them of their opportunity to submit written comments to the Board for a period of thirty days. The notices appeared in the Gloucester County Times, the Burlington County Times, the

Trenton Times, the Home News Tribune, the Asbury Park Press, Today's Sunbeam, the Courier Post, The Express Times, the Bergen Record, the Courier News and The Daily Record on October 29, 2010, the Star Ledger on November 1, 2010, the Courier Post and the Hunterdon Review on November 3, 2010, the Press of Atlantic City, Hopewell Valley News, the Lambertville Beacon, the Echoes Sentinel, the Chatham Courier, the Bernardsville News, the Observer-Tribune and The Cape May Star and Wave on November 4, 2010 and the Windsor Heights Herald and the Princeton Packet on November 5, 2010. No comments or resolutions were received as a result of these public notices.

On April 22, 2010, pursuant to procedure set forth in In the Matter of an Optional Expedited Rate Procedure for Cable Companies and the Application of the Optional Expedited Procedure to the Cable Companies that File FCC Forms 1205 and/or 1210 and All Future Forms Developed and Approved by the Federal Communications Commission, BPU Docket No. CX95120636, Order Dated January 12, 1996 ("Expedited Order"), a formal pre-transmittal telephone conference was scheduled in this matter.

Customarily, under the terms of the Expedited Order, the parties involved would generally indicate during the formal pre-transmittal conference call whether the filing should proceed as an expedited or as a standard litigated matter. However, the Division of Rate Counsel ("Rate Counsel") chose not to participate in the April 22nd scheduled conference call, but informed Board's Staff ("Staff") that it would notify the Board on April 26, 2010 how it wished to proceed.

Thereafter, over the next five months, Comcast and Rate Counsel held discussions and exchanged information relative to Comcast's provision of digital adapter equipment, among other things.

On September 28, 2010, Rate Counsel submitted a letter to the Board indicating its position that this matter not be processed under the expedited procedure and expressed its desire that it "be transmitted to the Office of Administrative Law for standard processing as a contested case."

On October 19, 2010, Comcast, in response to the September 28 letter from Rate Counsel, submitted a settlement proposal to Staff and Rate Counsel for review and comments.

Subsequently, on October 27, 2010, representatives for Comcast, Rate Counsel and Staff (collectively, "the Parties") met to discuss Comcast's settlement proposal and Rate Counsel's request that the matter be handled as a contested case. During this meeting, Rate Counsel requested additional information on the digital adapters, subscriber counts and additional outlets.

On November 5, 2010, Comcast filed a letter in response to Rate Counsel's position vis-à-vis certain FCC Orders as addressed at the October 27th meeting and also to clarify its position on the FCC rules regarding additional outlets and basic only equipment rates.

On November 9, 2010, Comcast electronically provided certain highly sensitive and proprietary information requested by Rate Counsel at the October 27th meeting. On November 10, 2010, the Parties participated in a telephone conference call to discuss Rate Counsel's requests for additional information and clarification of the limited basic only digital adapter offering.

On November 19, 2010, the Board's Secretary sent a letter to Rate Counsel responding to its September 28, 2010 letter, noting the untimeliness of its request for contested-case processing and requesting that it provide within five days a list of all disputed material facts for which Rate

Counsel contended an evidentiary hearing was required. Also on that date, Staff's attorney sent a letter to Comcast asking whether Comcast would consent to a waiver of its rights under 47 CFR § 76.933(g)(2) so that a rate Order could be issued by the Board beyond the normal twelve-month requirement.

On November 24, 2010, Rate Counsel responded to the Board Secretary's letter and listed fourteen issues (See Attachment B) which it contended required evidentiary hearings. Also on that date, Comcast responded to Staff's request, and indicated by letter that it would not be willing to waive its rights under 47 CFR § 76.933(g)(2) to a final determination in this matter within the twelve-month review period.

On December 1, 2010, the Board's Secretary sent a letter to Comcast's Attorney of Record inviting Comcast to respond to issues in Rate Counsel's letter of November 24th and its proposal of September 28th that this matter be processed as a contested case.

On December 6, 2010, Comcast submitted its response to Rate Counsel's November 24th letter and the fourteen proposed issues. Comcast averred that Rate Counsel's approach (in submitting a formal request for contested processing now) was at odds with established Board policies and practices essential for the timely completion of rate case reviews. Comcast noted that to this day, Rate Counsel had not made the customary factual inquiries regarding a contested Form 1205 which would routinely be promulgated concerning issues presented in such a filing. Comcast further noted that Rate Counsel chose not to send Comcast any inquiries regarding any aspect of the Form 1205 other than those related to digital adapter rates and contended that Rate Counsel's list of issues were expressly limited to that issue. Essentially, Comcast stated that "Rate Counsel's list suggests instead that its concerns with Comcast's DTA offering are legal, rather than factual, in nature."

DISCUSSION AND FINDINGS

Regarding Rate Counsel's request for a contested-case hearing, the Board is cognizant that a "contested case" is defined as "a proceeding . . . in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. . ." In re Provision of Basic Generation Service for Period Beginning June 1, 2008, 411 N.J. Super. 69, 85-86 (App. Div. 2009), certif. granted, 201 N.J. 439 (2010), citing N.J.S.A. 52:14B-2(b). The Board is also aware that the New Jersey Administrative Procedures Act ("APA"), N.J.S.A. 52:14B-1 to -25, "does not create a substantive right to an administrative hearing. The act merely prescribes the procedure to be followed in the event an administrative hearing is otherwise required by statutory law or constitutional mandate." In re Application of Modern Indus. Waste Serv., Inc., 153 N.J. Super. 232, 237 (App. Div. 1977).

In addition, the Board notes that even if a hearing is not required under the Cable Television Act or the APA, it may be required by constitutional right if there are "material disputed adjudicative facts" at issue. In re Public Service Elec. and Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings, 330 N.J. Super. 65, 119 (App. Div. 2000), aff'd, 167 N.J. 377, cert. denied, 534 U.S. 813, 122 S. Ct. 37, 151 L. Ed. 2d 11 (2001), citing Frank v. Ivy Club, 120 N.J. 73, 98, cert. denied, 498 U.S. 1073, 111 S. Ct. 799, 112 L. Ed. 2d 860 (1991). However, "[i]t is only when the proposed administrative action is based on disputed adjudicative facts that an evidentiary hearing is mandated." In re Solid Waste Util. Customer Lists, 106 N.J. 508, 517 (1987). See also State, Div. of Motor Vehicles v. Pepe, 379 N.J. Super. 411, 419 (App. Div.

2005) ("No disputed issue of material facts existed. Hence, no evidentiary hearing was required."). Indeed, even if Rate Counsel could argue that N.J.S.A. 48:5A-11 requires a contested-case hearing for this Form 1205 filing, Rate Counsel's proposed issues regarding the DTA are purely legal and therefore do not present any material issue of fact that would require a contested-case hearing before an administrative law judge.

Having reviewed the submissions of the Parties, the Board agrees with Comcast to the extent that Rate Counsel had failed to present legitimate material issues of fact that warrant a contested case hearing and any foundation on which to grant its request. Comcast is correct that Rate Counsel's stated issues are limited to Comcast's digital adapter offering and that the issues identified are legal rather than factual in nature. Rate Counsel's proposed factual issues do not call into question the rates calculated in the Form 1205. Rather, they question the legitimacy of charging customers for digital adapter equipment, the taxable nature of that equipment, whether Comcast may, as it has proposed, institute an additional outlet charge for delivery of services beyond the limited basic tier using digital adapter equipment and whether Comcast provides digital adapter equipment nationally in the same manner as it has proposed in New Jersey. Such issues are all clearly legal rather than factual and those issues of Comcast's national practices as well as equipment taxability are both irrelevant to the Form 1205 and beyond the rate determination that must be rendered by this Board. The specific issues and their applicability follow the sequence in which they were presented by Rate Counsel (See Attachment B) and are discussed in greater detail below.

Rate Counsel's first issue "Whether charging ratepayers for Digital Adapters ("DTAs") is just and reasonable?" is clearly a legal, not factual issue. The disparity in the parties' positions on this issue appears to stem from a difference in interpretation of a 2007 FCC Order concerning a cable operator's responsibilities in the carriage of digital broadcast signals.¹ Rate Counsel believes that the Viewability Order prohibits Comcast from charging its customers for digital adapter equipment. Rate Counsel has not, however, provided anything in support of this position, notwithstanding requests by Staff and Comcast to do so. Comcast, on November 5, 2010, through its Washington, D.C. counsel, provided the Parties with a legal memorandum that explained and provided a level of support for its position which is in clear conflict with Rate Counsel's position. Without making any conclusions on the positions of either party, it is clear that this issue is not a factual issue that warrants a hearing. The Form 1205 calculates the maximum allowable charges that may be imposed for regulated equipment and installations. It does not consider or set forth the conditions under which such charges may be imposed. The only finding that a local franchising authority certified to approve rates, such as the Board, is required to decide is whether or not the rates proposed for regulated equipment and installation activities are reasonable and calculated in accordance with the FCC's rules governing those rates.

From a general perspective, the right of cable operators to change the technology that they use to deliver programming and require their customers to lease equipment to view such programming is well established. Federal regulations provide specifically at 47 CFR § 76.605, Note 6, that "[n]o State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology." Because of these limitations, local franchising authorities certified to approve rates, such as the Board, cannot require Comcast or any other cable operator to continue offering non-local broadcast

¹ See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064 (November 30, 2007) ("Viewability Order").

channels on an analog tier or to offer such channels without the need for a converter. This effectively permits Comcast, through an allowed change in its transmission technology and, after providing notice to its subscribers, to require the use of a digital converter or digital adapter-type device to receive some or all of the channels presently carried on its analog tier without the need to obtain State or local government approval.

Issues two through five and issue eight question the reasonableness, appropriateness and implementation of a \$1.99 additional outlet charge associated with digital adapter equipment used for the reception of channels beyond the regulated limited basic tier. Since this charge involves a fee for the reception of programming beyond the limited basic tier, neither the charge nor the method by which it is imposed is regulated. Therefore, these are not issues to be decided in the Form 1205 and the Board is preempted by Federal law from making a decision on the reasonableness of that charge or whether it may continue for a set period of time.

Issues six and seven, which address the cost of the digital adapter unit and whether such cost is solely an equipment cost, or also includes a service component, do not require a determination in this case. The type or cost of services provided using a digital adapter is not relevant to the equipment and installation rates governed by a Form 1205. As to the cost of the digital adapter unit itself, while the cost of a digital adapter unit is an element in the determination of the rate, it is not the only element that determines the rate. The only finding that a local franchising authority certified to approve rates, such as the Board, needs to decide is whether or not the rates proposed for regulated equipment and installation activities are reasonable and calculated in accordance with the FCC's rules governing those rates. The Board is not required to issue a separate finding on each and every element that goes into the rate.

Issues nine, ten, and twelve, which concern whether customers should be allowed to purchase digital adapter equipment, whether such equipment is taxable, and whether a service is associated with a digital adapter, are governed by other state or federal law (issues nine and ten) or involve matters that are outside of the scope of what the Board may determine in this proceeding.

Issue eleven, which concerns whether it is appropriate to recover a service cost through an equipment rate on the Form 1205, is a legal rather than a factual question and is more appropriately posed to the FCC. The \$1.99 additional outlet charge proposed by Comcast is associated with digital adapter equipment used for reception of channels beyond the regulated limited basic tier. It is not being implemented as an equipment charge, rather as an outlet charge. Additional outlet charges applicable to the delivery of digital signals are allowed by the FCC. They are not regulated and are not part of the Form 1205.

The plethora of topics listed under issue thirteen, involving the timetable for Comcast's national transition to full digital transmission, rates and promotions or service terms employed outside of New Jersey are irrelevant to a determination of the reasonableness of the rates within the Form 1205. As such, they are not issues that would necessitate a hearing or that can or should be decided here.

Finally, in issue fourteen, Rate Counsel suggested that a contested-case hearing was necessary to determine whether the supporting data, including cost data [in the filing], were still current, complete and accurate. The Board notes that under the FCC's Form 1205 methodology, the charges established for equipment leases and customer installations are based on the prior year's actual costs. Unlike traditional rate base/rate of return regulation, rates in a Form 1205 are based on known, actual costs and are not set on the basis of a "test year," that is, a mix of actual and forecasted data that are updated periodically during the

pendency of the case as additional actual data becomes known. Therefore, this is not an issue for determination in the Form 1205.

Accordingly, the Board has reviewed Rate Counsel's list of issues and HEREBY FINDS that a contested-case hearing is not required for this Form 1205 filing. Therefore, the Board HEREBY DENIES Rate Counsel's request for a contested-case hearing.

DATED: 1/19/11

BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



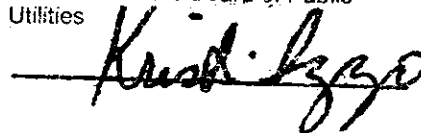
NICHOLAS ASSELTA
COMMISSIONER

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 Utilities



**IN THE MATTER OF THE APPLICATION OF CERTAIN COMCAST CABLE
COMMUNICATIONS, LLC SUBSIDIARIES' RATE CHANGES UNDERAGGREGATE FCC
FORM 1205 DETERMINING
REGULATED EQUIPMENT AND INSTALLATION COSTS
DOCKET NO. CR10030162**

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Attachment A

**COMCAST OF AVALON, LLC
COMCAST OF BURLINGTON COUNTY, LLC
COMCAST OF CENTRAL NEW JERSEY, LLC
COMCAST OF CENTRAL NEW JERSEY II, LLC
COMCAST OF GARDEN STATE, L.P.
COMCAST OF GLOUCESTER COUNTY, LLC
COMCAST OF LONG BEACH ISLAND, LLC
COMCAST OF MEADOWLANDS, LLC
COMCAST OF MERCER COUNTY, LLC,
(COMCAST OF HOPEWELL VALLEY, INC.,
COMCAST OF LAWRENCE, LLC)
COMCAST OF MONMOUTH COUNTY, LLC
COMCAST OF NEW JERSEY, LLC
COMCAST OF NEW JERSEY II, LLC
COMCAST OF NORTHWEST NEW JERSEY, LLC
COMCAST OF OCEAN COUNTY, LLC
COMCAST OF SOUTHEAST PENNSYLVANIA, LLC
COMCAST OF SOUTH JERSEY, LLC
COMCAST OF WILDWOOD, LLC**



State of New Jersey
DIVISION OF RATE COUNSEL

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10 NOV 24 PM 2:00
BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

November 23, 2010

Kristi Izzo, Board Secretary
New Jersey Board of Public Utilities
Two Gateway Center, Suite 801
Newark, New Jersey 07102

Re: I/M/O Petition of Comcast Cable for Approval of FCC Form 1205

Dear Secretary Izzo:

The New Jersey Division of Rate Counsel ("Rte Counsel") submits this letter in response to your request dated November 19, 2010 asking for Rate Counsel's disputed material facts that require an evidentiary contested case hearing. The material facts disputed by Rate Counsel relating to Comcast's FCC Form 1205 are set forth in Exhibit A, attached hereto.

Rate Counsel has continuously raised concerns with this filing. In April 2010, Rate Counsel verbally advised the staff of the Office of Cable Television ("OCTV") that it objected to the company's request to have the matter proceed as an expedited matter. While awaiting transfer to the OAL, Rate Counsel made various efforts to resolve the issues amicably with both Comcast and Board Staff. With no resolution in sight, and no action by Board Staff to transfer the matter to the OAL, on September 28, 2010, Rate Counsel sent its letter with a formal request to send the matter to the OAL. After such

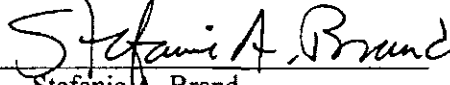
request, Rate Counsel continued to pursue an amicable solution with Board Staff and the company in attempts to resolve this matter but those efforts failed.

As set forth in Exhibit A, attached, there are material factual issues regarding the company's proposed Digital Adapters ("DTA") rates. The DTA is a hard-wired electronic apparatus that permits reception of the main digital signal to other television sets in the same household, without the need for a separate digital converter box at each television. The factual issues require handling as a contested case to determination whether the Form 1205 rates are just and reasonable.

Thank you for your consideration in this matter.

Sincerely,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: 
Stefanie A. Brand
Director

Cc: Dennis Linken, Esq.
Celeste Fasone, Director OCTV
Anne Marie Shatto, Deputy Attorney General

Exhibit A

Contested Issues

1. Whether charging ratepayers for Digital Adapters ("DTAs") is just and reasonable?
2. Whether the monthly charge of \$1.99 for a DTA is a just and reasonable charge?
3. Whether the allocation of \$1.49 of the \$1.99 to service is properly recoverable in the 1205 filing?
4. Whether it is just and reasonable to charge \$1.99 for any DTA over and above the third unit?
5. Whether Comcast's proposal not to charge for the first three DTAs is consistent with the application of a uniform rate structure?
6. Whether the cost of the DTA unit is just and reasonable?
7. Whether the cost of a DTA is an equipment cost only or whether there is both an equipment and service component?
8. Whether the \$1.99 monthly charge should remain after recovering the initial DTA cost?
9. Whether the subscriber should be allowed to purchase the DTA instead of paying the \$1.99 monthly charge forever?
10. Whether it is necessary just and reasonable for ratepayers to pay taxes on DTA equipment?
11. Whether it is proper for the company to recover a service cost through an equipment rate on a 1205 filing?
12. Whether there is any service associated with a DTA?
13. Whether the terms, conditions and charges being charged in each New Jersey system are consistent with the national application of this digital conversion scheme and consistent with the national 1205 filing?
 - a) Whether there are any systems covered by this national Form 1205 filing where the company provides more than three DTAs free of charge?
 - b) Whether the terms, conditions and charges for DTAs are uniform in all systems covered by this national Form 1205 filing?
 - c) Whether Comcast is all digital for basic and cable programming tier in New Jersey and nationally?
 - d) What systems in New Jersey are all digital, basic and cable program service tiers, and if so when were they converted to digital?
 - e) What systems in New Jersey will be all digital, basic and cable program service tiers in the next 18 months?
 - f) What systems nationally are all digital, basic and cable program service tiers, and if so when were they converted to digital?
 - g) What systems nationally will be all digital, basic and cable program service tiers in the next 18 months?
14. Whether the supporting data, including cost data is still current complete and accurate?