

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION)
OF COMCAST CABLEVISION OF DELMARVA,)
INC., FOR A CHANGE IN ITS BASIC)
SERVICE RATES AND NECESSARY)
EQUIPMENT AND INSTALLATION CHARGES) PSC DOCKET NO. 04-289
IN THE UNINCORPORATED AREAS OF)
KENT, SUSSEX, AND NEW CASTLE)
COUNTIES SERVED BY THE DOVER AND)
SALISBURY HEAD-ENDS)
(FILED JULY 30, 2004))

ORDER NO. 6498

AND NOW, to-wit, this 19th day of October, A.D. 2004;

WHEREAS the Commission having, on October 19, 2004, conducted a public evidentiary hearing on the applications filed by Comcast Cablevision of Delmarva, Inc. ("Comcast"), seeking approval to make changes in the maximum permitted rates for basic cable television service and equipment and installation charges governing service provided by Comcast in the areas designated as Community Identifier Units DE0034, DE0059, DE0062, DE0070, DE0074, DE0079, DE0088, DE0091, and DE0093; and

WHEREAS, based on the evidence so presented, the Commission having determined that Comcast's proposed rate adjustments as they appear on its amended FCC Forms 1240 and 1205, have been calculated in accordance with the Rules and Regulations of the Federal Communications Commission and, hence, should be approved for service after November 1, 2004; now, therefore,

IT IS ORDERED:

1. That the Commission hereby approves the maximum permitted rates for basic cable service and equipment and installation as set forth below for service offered by Comcast Cablevision of Delmarva, Inc., in the areas designated as Community Identifier Units DE0034, DE0059, DE0062, DE0070, DE0074, DE0079, DE0088, DE0091, and DE0093, with such maximum permitted rates to be effective for service on and after November 1, 2004.

Basic Service Tier Rates

KENT COUNTY UNINCORPORATED (SERVED FROM DOVER, DE)

CURRENT OPERATOR-SELECTED RATE	PROPOSED MAXIMUM MONTHLY PERMITTED RATE	OPERATOR-SELECTED MONTHLY RATE (EFFECTIVE NOVEMBER 1, 2004)	VARIANCE
\$18.75	\$20.47	\$18.75	\$0.00

SUSSEX COUNTY UNINCORPORATED (SERVED FROM SALISBURY, MD)

CURRENT OPERATOR-SELECTED RATE	PROPOSED MAXIMUM MONTHLY PERMITTED RATE	OPERATOR-SELECTED MONTHLY RATE (EFFECTIVE NOVEMBER 1, 2004)	VARIANCE
\$19.45	\$21.40	\$19.45	\$0.00

NEW CASTLE COUNTY UNINCORPORATED (SERVED FROM DOVER, DE)

CURRENT OPERATOR-SELECTED RATE	PROPOSED MAXIMUM MONTHLY PERMITTED RATE	OPERATOR-SELECTED MONTHLY RATE (EFFECTIVE NOVEMBER 1, 2004)	VARIANCE
\$18.25	\$18.71	\$18.25	\$0.00

Comcast's Installation Rates:

KENT COUNTY UNINCORPORATED (SERVED FROM DOVER, DE)
 NEW CASTLE UNICORPORATED (SERVED FROM DOVER, DE)
 SUSSEX COUNTY UNINCORPORATED (SERVED FROM SALISBURY, MD)

	CURRENT OPERATOR-SELECTED RATE	PROPOSED MAXIMUM PERMITTED RATE	OPERATOR-SELECTED RATE EFFECTIVE 11/04/04	VARIANCE
Hourly service charge	\$35.90	\$35.17	\$35.17	(\$0.73)
Install unwired home	\$43.08	\$52.23	\$43.08	\$0.00
Install pre-wired home	\$28.72	\$31.40	\$28.72	\$0.00
Install A/O initial	\$14.36	\$17.15	\$14.36	\$0.00
Install A/O separate	\$25.13	\$25.31	\$25.13	\$0.00
Relocate outlet	N/A	\$23.60	\$23.60	\$0.00
Other Install-Upgrade (non-addressable)	\$14.36	\$17.12	\$14.36	\$0.00
Other Install-Downgrade (non-addressable)	\$14.36	\$15.55	\$14.36	\$0.00
Upgrade/downgrade service (addressable)	\$1.99	\$1.99	\$1.99	\$0.00
Connect VCR-Connect Initial	N/A	\$8.79	\$8.79	\$0.00
Connect VCR-Connect Separate	N/A	\$16.10	\$16.10	\$0.00
Field Collection	N/A	\$23.23	\$20.00	\$0.00
Customer Trouble Call	N/A	\$23.23	\$23.23	\$0.00

Comcast Equipment Rates:

KENT COUNTY UNINCORPORATED (SERVED FROM DOVER, DE)
 NEW CASTLE UNICORPORATED (SERVED FROM DOVER, DE)
 SUSSEX COUNTY UNINCORPORATED (SERVED FROM SALISBURY, MD)

	CURRENT OPERATOR-SELECTED MONTHLY RATE	PROPOSED MAXIMUM MONTHLY PERMITTED RATE	OPERATOR-SELECTED MONTHLY RATE TO BE EFFECTIVE 11/01/04	VARIANCE
Remote Control	\$0.34	\$0.33	\$0.33	(\$0.01)
Non-addressable Converter	\$0.34	\$1.30	\$0.34	\$0.00
Addressable Converter	\$2.81	\$4.83	\$2.81	\$0.00
HDTV Converter Box	\$5.00	\$8.33	\$5.00	\$0.00

2. That the Commission will enter formal findings and an

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SALISBURY HEAD-ENDS)
(FILED JULY 30, 2004))

FINDINGS AND OPINION TO ACCOMPANY PSC ORDER NO. 6498

APPEARANCES:

On behalf of the Applicant, Comcast Cablevision of Delmarva, Inc.:

MORRIS, NICHOLS, ARSHT & TUNNELL
BY: MICHAEL HOUGHTON, ESQUIRE

On behalf of the Delaware Public Service Commission Staff:

GARY A. MYERS, RATE COUNSEL
DEPUTY ATTORNEY GENERAL

On January 25, 2005, the Commission enters the following Findings and Opinion:

I. BACKGROUND:

1. Comcast Cablevision of Delmarva, Inc. ("Comcast") holds a franchise issued by this Commission which authorizes Comcast to provide cable television service throughout a single franchise area encompassing a small portion of southern New Castle County, all of Kent County, and all of Sussex County. See PSC Order No. 3463 (Aug. 25, 1992). Comcast serves that franchise area with three systems. In

numerous prior entries, the last of which being the Findings and Opinion to Accompany PSC Order No. 6285 (Jan. 13, 2004), this Commission has outlined the regime which has historically been followed in scrutinizing the maximum permitted basic service tier ("BST") rates and associated equipment and installation charges for cable service within this franchise. The Commission will not again recite that background. It is enough to say that Comcast uses the federal annual adjustment method for its BST rates (see 47 C.F.R. § 76.922(e)) and each year makes two groups of filings: one to cover rates for subscribers served by the Dover and Salisbury, Maryland systems and a second to cover rates for subscribers receiving service from the Georgetown system.

2. This docket involves the year 2004 filings related to the regulated rates for Comcast subscribers served by the Dover and Salisbury, Maryland systems. On July 30, 2004, Comcast filed separate applications to change the maximum permitted BST rates for the areas served by those systems. One application (accompanied by an FCC Form 1240) proposed a new maximum permitted BST rate for the New Castle County area (CUID DE0093) served from the Dover head-end. A second application (with a different FCC Form 1240) advanced a separate, differing, maximum permitted BST rate for the Dover system subscribers in "Kent County Unincorporated." Finally, a third application (and a third FCC Form 1240) set forth a separate, and also different, maximum permitted BST rate for the Sussex County area (CUID DE0079) served by the Salisbury system.¹ Under the FCC Forms 1240, the maximum permitted

¹Comcast later filed amended FCC Forms 1240 for the "Kent County

BST rate for Kent County Unincorporated would be \$20.47; for New Castle County Unincorporated, \$18.71; and for the Salisbury head-end subscribers, \$21.40. Each of the three applications also included a separate FCC Form 1205 proposing adjustments to the maximum permitted equipment and installation charges for each area. However, because the cost-based equipment and installation charges had been calculated on a company-wide basis, the resulting proposed maximum charges were the same in each separate Form 1205.²

3. On September 30, 2004, Comcast published public notices of its three applications and its proposed adjustments to regulated cable rates for subscribers served by the Dover and Salisbury systems. See Exhs. 1A (The News Journal) and 1B (Delaware State News). The notices solicited comments concerning the proposed rate adjustments and announced that the Commission would consider the three applications

Unincorporated" pricing area (Exh. 2A (Sept. 10, 2004)) and the "New Castle County Unincorporated" area (Exh. 3A (Aug. 9, 2004)). In preparing these findings, Staff discovered that the Exhibit 3A submitted at the October 19, 2004 public hearing was not the correct document. The document submitted at that time was an FCC Form 1240 for the Kent County area, rather than the announced amended Form 1240 for the New Castle County pricing area. The correct August 9, 2004 FCC Form 1240, applicable to the New Castle County pricing area, has now been substituted as "Exh. 3A." Similarly, Staff also discovered that the Exhibit 2B submitted at the October hearing was another incorrect document and that no actual Exhibit 3B had been delivered to the Secretary for inclusion in the exhibits. New Exhibits 2B and 3B, reflecting FCC Forms 1205 for the Kent County and New Castle County pricing areas, were filed in the exhibit folio on January 5, 2005. Because Staff's analysis was performed on the correct documents (the ones belatedly corrected and submitted as exhibits), the recent substitutions to the exhibit folio do not call into question the Commission's conclusions that the proposed maximum permitted rates comply with the governing federal rules.

²Governing FCC rules allow a cable operator to aggregate its equipment and installation costs on a company level and use such costs to determine equipment and installation charges applicable throughout the company. 47 C.F.R. § 76.923(c)(1), (3). See also 47 U.S.C. § 543(a)(7)(A).

during its regularly scheduled meeting on October 19, 2004. No written comments were received in response to the published notice.

4. At the announced October 19th hearing, the Commission Staff and Comcast introduced into the record the FCC Forms 1240 (as revised) and 1205 for the two Dover system pricing areas (Exhs. 2A & 2B; 3A & 3B), as well as similar forms for the area served by the Salisbury system. Exhs. 4A & B.³ In addition, Comcast offered the oral testimony of Thomas Worley, the area Director for Human Relations for Comcast, Kent and Sussex Counties. The Commission Staff presented the pre-filed (Exh. 5) and oral testimony of William C. Schaffer, a Staff Public Utilities Analyst. At the end of the hearing, two members of the public, Mary Anne McGonigal and John Flaherty, spoke to the Commission. Tr. 11, 14. Ms. McGonigal expressed concerns about the lack of any lengthy discussion among the Commissioners about the rate adjustments, indicating that she felt that the cable fees were "outrageous." When the Chair explained that rate adjustments to regulated BST services and related equipment and installation charges were governed exclusively by federal rules, methodologies, and formulae which the Commission simply applied, Ms. McGonigal questioned the purpose for a public hearing if review of the rates was simply to be such a "ministerial" function. The Chair acknowledged her own curiosity about the need for such procedure given that federal rules governed, with the Commission lacking any real rate-making authority. However, the Chair pointed out that the traditional practice had been to conduct such rate proceedings in public hearings, and that such

³See n. 1 above describing later substitution of correct exhibits.

process allowed the Commission's review, however subservient to federal rules, to be done in a public forum. The Executive Director also indicated that, on occasion, Staff had found errors in the application of the federal rules and had required the cable operator to make corrections to its proposed regulated rates. The Director emphasized, however, that a local franchising authority could not challenge the rate methodologies set by the FCC for determining rates for BST service and associated equipment and installation charges.

Tr. 11-13. When Mr. Flaherty spoke, he focused on Comcast having hosted a "fundraiser" for a "regulator" (with oversight authority over Comcast) in one of the incorporated areas within the State. Mr. Flaherty asked whether the Commission (or the State), in exercising cable franchising authority in the unincorporated areas of the State, had adopted a policy about the Commissioners' participation in any such Comcast-sponsored events. The Vice Chair indicated that, to his knowledge, no Commissioner had ever been involved in such type of practice and indeed questioned whether it would be appropriate for a regulator to be involved in a fundraiser hosted by Comcast. The Chair also pointed out, and Mr. Flaherty acknowledged, that generally the Commission had no cable jurisdiction in the incorporated areas of the State. She suggested that Mr. Flaherty direct his comments and concerns about what had occurred in another jurisdiction to Comcast.

Tr. 14-18.

5. At the conclusion of the hearing, the Commission determined, from the evidence presented, that the rate adjustments sought by Comcast in the FCC forms entered into the record were

consistent with the governing FCC's rate methodologies. It thus entered PSC Order No. 6498 (Oct. 19, 2004) approving the revised maximum permitted rates for BST service and installation and equipment charges for the three areas covered in this docket.

6. In Order No. 6498 the Commission said it would explain the reasons for its actions in a later-filed Findings and Opinion. This is that document. The findings are based upon a record consisting of six exhibits and a twenty-one page *verbatim* transcript of testimony.

II. SUMMARY OF THE EVIDENCE:

7. As noted above, in this matter, Comcast seeks approval of three separate maximum permitted rates for BST service provided by two of its three systems within its single franchise area. Under the filed FCC Forms 1240, the new maximum permitted BST rate for subscribers in "Kent County Unincorporated" would decline to \$20.47 (Exh. 2A); for those in New Castle County, it would fall to \$18.71 (Exh. 3A); and for those in Sussex County served from Salisbury, Maryland, it would drop to \$21.40 (Exh. 4A).⁴ In contrast, the new proposed maximum permitted equipment and installation charges are the same across all of the above areas. (Exhs. 2B, 3B, & 4B).⁵

8. In his pre-filed testimony (later adopted at the hearing), William C. Schaffer, a Staff Public Utilities Analyst, reported that Staff had verified the financial data and calculations that Comcast had used in its FCC Forms 1240 and 1205. Staff had done so by tracing the information utilized in the various forms back to Comcast's supporting documentation. Exh. 5 at 4-6. Mr. Schaffer indicated that, in his view, Comcast had correctly applied the FCC rate

⁴The operator-selected rates in each area would be below the applicable maximum permitted rate. See Exh. 5, Attachment (\$18.75 operator-selected rate for Kent Co. Unincorporated; \$18.25 operator-selected rate for New Castle County Unincorporated; & \$19.45 operator selected rate for Salisbury system). In addition, these operator-selected rates are the same as the operator-selected rates now being charged by Comcast in these three areas. See Tr. 10.

⁵In most instances, the operator-selected rates for equipment and installation charges are below the maximum permitted levels. In addition, except for two instances, those operator-selected charges continue the current operator-selected charges. In the two instances - (the hourly service charge and remote control) - the charge will decline from present levels by \$0.73 and \$.01, respectively. See Tr. 10.

regulation rules in calculating the proposed basic maximum permitted BST rates for the three areas. Similarly, he reported that Comcast had also correctly applied the federal rules in calculating its proposed maximum permitted equipment and installation charges applicable to all of the three areas. Exh. 5 at 5-6. He thus recommended that the Commission approve the proposed adjustments to the maximum permitted rates for BST service, equipment rentals, and installation services. Exh. 5 at 6. Mr. Schaffer did note that in light of Comcast's movement to installation charges calculated on a company-wide level, that it would be appropriate to have a study performed to validate the allocation of time factors related to such costing. Specifically, Staff believed that a survey should be done to determine average installation times. Staff recommended that such study be performed prior to Comcast's next annual rate adjustment filing in 2005. Exh. 5 at 6-7.

9. At the hearing, Thomas Worley, Comcast's Director of Human Relations, testified that the cable company agreed with the conclusion reached by Mr. Schaffer in his pre-filed testimony. Tr. 6-7.

10. In his oral testimony, Staff Analyst Schaffer initially adopted his pre-filed testimony. Tr. 8. He then again recommended approval of the proposed maximum permitted rates for BST service and equipment and installation charges as set forth in the various FCC Forms 1240 (as revised) and 1205 filed by Comcast. Tr. 8-9. He also reported that Comcast had agreed to perform a formal study of the labor allocations used to determine its company-wide installation charges. According to Mr. Schaffer, such study would be completed

prior to next year's rate filing and would then be used in the installation charge calculations in that year 2005 filing.⁶

⁶As noted earlier, several members of the public also made comments at the end of the hearing. Those comments are summarized at paragraph 4 above.

III. FINDINGS AND OPINION:

11. The Commission has jurisdiction over this matter. The General Assembly has conferred upon the Commission the jurisdiction to implement federal regulations or legislation concerning the provision of cable television service. 26 Del. C. § 605(b). Since the return of federal BST cable rate regulation in 1993, the Commission has been certified as the local franchising authority for the franchise held by Comcast covering New Castle, Kent, and Sussex Counties. It thus holds the authority to superintend the rates charged by Comcast for its BST service and related equipment rental and installation services. See 47 U.S.C. § 543(a)(1).

12. The Commission approves the proposed maximum permitted rates for BST service as set forth in the three FCC Form 1240s (Exhs. 2A, 3A, and 4A) entered at the hearing. According to Staff's written and oral testimony, those new maximum permitted BST rates were calculated in a manner consistent with the FCC's rate regulation rules under the annual rate adjustment methodology. 47 C.F.R. § 76.922(e). Similarly, based on Staff's testimony, the Commission approves the maximum permitted rates for equipment and installation charges set forth in the FCC Forms 1205 filed for the three areas. Exhs. 2B, 3B, and 4B. Again, according to Staff's testimony, those rates, calculated on a company-wide basis, have been determined in accordance with the FCC's rate rules applicable to equipment and installation charges. 47 C.F.R. § 76.923. The Commission notes that Comcast has decided to charge BST rates in each area lower than the maximum permitted rates approved here.

13. These Findings and Opinion shall be filed with PSC Order No. 6498 (Oct. 19, 2004).

BY THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

Commissioner

Commissioner

ATTEST:

/s/ Norma J. Sherwood
Acting Secretary