

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

IN THE MATTER OF THE INVESTIGATION)
ON MOTION OF THE COMMISSION INTO) PSC REGULATION DOCKET
THE RE-REGULATION OF BASIC SERVICE) NO. 31
RATES FOR CABLE TELEVISION SERVICE)

ORDER NO. **3660**

AND NOW, to-wit, this 24th day of August, 1993;

WHEREAS, the Delaware Public Service Commission ("PSC" or "Commission") is empowered by 26 Del. C. §605(6) to enact Regulations which it finds necessary or appropriate to implement federal legislation or regulations governing the provision of cable television service for application to systems which are subject to the supervision of the Commission;

AND WHEREAS, the Commission has determined it appropriate to enact, implement, and enforce minimum quality of service standards based primarily upon the nationwide standards adopted by the Federal Communications Commission in MM Docket No. 92-263 (47 CFR Part 76) and to enact enabling Regulations for basic service rate regulation so as to permit the required certification to the Federal Communications Commission for the regulation of cable television systems providing service under Franchises granted by the PSC;

AND WHEREAS, pursuant to the provisions of the

Administrative Procedures Act (29 Del. C. Ch. 101), the Commission has conducted a duly noticed public hearing, and having considered the Findings and Recommendations of the Hearing Examiner thereon, the Commission has determined to adopt said Findings and Recommendations; now, therefore,

IT IS ORDERED:

1. That the Commission hereby adopts and incorporates herein the hereto attached Findings and Recommendations of the Hearing Examiner (Exhibit 1).

2. That pursuant to the provisions of 26 Del. C. §605(6) and the Commission hereby adopts and approves the hereto attached (Exhibit "A") Rules and Regulations governing basic cable rate regulation and customer service standards.

3. That the Commission's Executive Director is hereby authorized to certify to the Federal Communications Commission ("FCC"), as soon as practicable, that the Delaware Public Service Commission has adopted regulations consistent with the FCC regulations and has met all other requirements to enable this Commission to seek and receive FCC certification for Basic Service Rate Regulation.

4. That the hereto attached Regulations will become effective thirty (30) days after the date of this Order.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Nancy M. Norling
Chairman

/s/ Donald D. Phillips
Commissioner

/s/ Joshua M. Twilley
Commissioner

/s/ John R. McClelland
Commissioner

Commissioner

ATTEST:

/s/ Robert J. Kennedy, III
Executive Director

E X H I B I T "1"

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THE RE-REGULATION OF BASIC SERVICE) NO. 31
RATES FOR CABLE TELEVISION SERVICE)

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: AUGUST 18, 1993

G. ARTHUR PADMORE
HEARING EXAMINER

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G. Arthur Padmore, duly appointed Hearing Examiner in this docket by Commission Order No. 3646, dated July 20, 1993, and pursuant to 26 Del. C. §502 and 29 Del. C. Ch. 101, reports to the Commission as follows:

I. BACKGROUND

1. By Order No. 3365, dated January 28, 1992, the Commission instituted this rulemaking proceeding to determine whether or not the various Commission franchised cable television systems operating in the unincorporated areas of Delaware were subject to "effective competition," as that term is defined by the Cable Communications Policy Act of 1984, and, therefore, not subject to rate regulation by local franchising authorities. On May 19, 1992, however, the Commission, by Order No. 3422, suspended further proceedings in this docket indefinitely, pending the consideration by Congress of then pending federal legislation relating to Cable Television service.

2. Following the enactment of the Cable Television Consumer Protection and Competition Act of 1992 ("the 1992 Cable Act") in

October, 1992, the Commission determined that it was appropriate for the regulation of cable television systems providing service under Commission-granted franchises to enact enabling regulations for basic service rate regulation and to enact, implement, and enforce minimum quality of service standards.

3. Thus, the Commission issued Order No. 3646 on July 20, 1993, directing the publication of notice of the resumption of proceedings in this docket, in which the Commission would consider the adoption of proposed regulations governing the provision of cable television service. The public notice (Exh. 1)¹ also invited public comment concerning the proposed regulations and scheduled a public hearing in this matter.

4. The Commission's Order also designated this Hearing Examiner to conduct such hearing, summarize all comments, and report his proposed findings and recommendations to the Commission.

5. The public hearing was conducted in the Commission's Dover office on the morning of August 12, 1993, with the following persons in attendance:

George C. Hering, III, Esquire, Donald B. Coates, and Malak Michael, representing the Public Service Commission Staff;

Patricia A. Stowell, the Public Advocate, representing the Office of the Public Advocate ("OPA");

¹References to the exhibits entered into the record of this proceeding will be cited as "(Exh. ___ at ___)" or "(Exh. ___)". Citations of the transcript of the August 12, 1993 public hearing will be referred to as "(Tr. at ___)".

Marion A. Phillips and Tom Worley, representing Storer Communications;

Edward G. Banks, Esquire and Wayne O'Dell, representing the Cable Television Association of Maryland, Delaware and the District of Columbia ("the Association"); and

Scott Dimerling and Donald Zagorski, representing Tele-Media Corporation.

6. Other than brief comments filed by the Association,² no one filed comments. Other than the persons named above, no one attended or otherwise participated in this proceeding. At the conclusion of the August 12, 1993 hearing, the record consisted of 2 exhibits and a *verbatim* transcript of the hearing. I have considered the entire record of this matter, and based thereon, I submit for the Commission's consideration these proposed findings and recommendations.

II. SUMMARY OF THE RECORD AND DISCUSSION

7. As previously noted, the Commission initiated this rulemaking proceeding to consider adoption of a rule dealing with cable television rate regulation so as to enable it to certify compliance with the rules of the Federal Communications Commission. In addition, the Commission also proposes to consider whether or not to adopt and enforce uniform customer service standards. Pursuant to 26 Del. C. §605(6), the Commission is

²The Association's comments, which proposed minor modifications to the proposed customer service standards, are discussed in more detail, *infra*, beginning at ¶10. I have marked and entered these comments into the record of this proceeding as Exh. 2.

authorized to enact regulations designed to implement any federal regulations or legislation regarding the provision of cable television service.

8. **Basic Cable Television Rate Regulation.** With respect to the regulation of rates for basic cable television service, the Commission proposes a rule that will "follow the Cable Television Rate Regulations promulgated by the Federal Communications Commission." No comments have been filed which oppose or object to the adoption of this proposed rule. Moreover, at the August 12, 1993 hearing, no one present raised any objection to the Commission's favorable consideration of this proposed regulation.

9. **Minimum Customer Service Standards.** The Commission also proposes adoption of regulations establishing minimum customer service standards for cable systems subject to its jurisdiction. Essentially, there are 5 rules proposed for adoption. These rules set forth the minimum standards for:

- A) office hours and telephone availability;
- B) installations, outages, and service calls;
- C) communications between cable operators and their subscribers regarding subjects such as rates, products and services offered, billing and complaint procedures, programming changes, etc.;
- D) billing, refund and credit policies;
- E) definitions of terms; and

F) application of rules, and penalties for violations thereof.

10. **Comments.** As noted, the Association filed comments suggesting "minor changes" to two of the proposed customer service standards. (Exh. 2 at 1.) First, the Association suggests modifying proposed Rule 3C(ii) by inserting at the beginning of that subparagraph the words, "Within the next billing cycle or thirty (30) days of" The Association asserts that as currently written, the proposed regulation suggests that on a customer's return of operator-supplied equipment, a cable operator would have to issue an over-the-counter check or cash. (Id.) According to the Association, most operators are not prepared to issue a check or make a cash refund in such instances. (Id.) Moreover, inclusion of the 30-day refund period would make this subparagraph consistent with the provisions of subparagraph 3C(i). (Id.)

11. Second, as proposed, the first sentence of Rule 5B reads:

"Whenever the Commission shall find, after notice and the opportunity for hearing, that a cable television system franchised by the Commission has violated or is violating any provision of this Regulation, the Commission may enter an order requiring compliance with the Regulation, together with the payment of such fine as the Commission determines to be reasonable and appropriate for such violation."

The Association suggests that this sentence be modified by

inserting the italicized passages below:

"Whenever the Commission shall find, after notice and a due process hearing, that a cable television system franchised by the Commission has violated or is violating any provision of this Regulation, the Commission may enter an order requiring compliance with the Regulation, together with the payment of such fine as the Commission determines to be reasonable and appropriate for such violation so long as the Commission action does not violate the terms of the cable operator's specific franchise terms and conditions in regard to the violation."

12. **Discussion.** I have reviewed the record evidence of this proceeding, and, for the reasons discussed below, recommend that the Commission adopt the proposed regulations, with the modifications discussed below. First, the Commission clearly has jurisdiction over this matter. Under the provisions of 26 Del. C. §605(6), the Commission is specifically authorized to "[a]dopt such regulations as [it] may find are necessary or appropriate to implement any federal regulations of legislation governing the provision of cable television service." Moreover, the Commission has met all of the statutory requirements, as set forth in 29 Del. C. Ch. 101, for adoption of proposed regulations. Due notice of this proceeding was published, written submittals have been received and considered, and a duly noticed public hearing was conducted.³

³Under 29 Del. C. Ch. 101, except for regulations specifically exempted by the provisions of 29 Del. C. §10113, before determining whether or not to adopt a new regulation or amend an existing regulation, the Commission is required to fulfill specific procedural steps, including providing due notice of the proposed regulation; inviting written submittals thereon

13. With respect proposed Rule No. 1 concerning basic rate regulation, I find this rule reasonable because it requires the Commission to "follow the Cable Television Rate Regulations promulgated by the [FCC]." Typically, Federal rules are subject to public debate and input before adoption.

14. Moreover, the Commission has already determined it appropriate to regulate the cable systems subject to its jurisdiction. (See, Order No. 3646.) The 1992 Cable Act requires a local franchising authority wishing to regulate basic service and equipment rates to certify in writing that: (a) its rate regulations will be consistent with the rate regulation the FCC prescribes; (b) it has the legal authority to adopt and the personnel to administer rate regulations; and (c) its procedural rules provide an opportunity for consideration of the views of interested parties.⁴ As previously noted, the Commission demonstrably has the legal authority to adopt and the personnel to administer rate regulations; and the Commission's procedural framework that affords all interested parties an opportunity to be heard is of long standing. Moreover, the FCC has specifically

(..continued)

from interested persons; and conducting duly noticed public hearings to receive all written submittals as well as testimonial and written evidence presented as such hearings. The Commission's decision must be based upon the record evidence of the hearings. See, 29 Del. C. §§10115-10118.

⁴Report and Order and Further Notice of Proposed Rulemaking, FCC MM Docket 92-266, April 1, 1993.

indicated that to meet certification requirements, "a straightforward rule stating that the local franchising authority will follow the rate regulations promulgated by [the FCC] will suffice."⁵ Proposed Rule No. 1 clearly comports with the FCC's certification requirements and should, therefore, be adopted.

15. In view of the foregoing, I would recommend that the Commission direct its Executive Director to certify to the FCC that the Delaware Public Service Commission has adopted regulations consistent with the FCC regulations and has met all other requirements to enable this Commission to regulate cable television systems subject to its jurisdiction.⁶

16. Turning to the "minor changes" proposed by the Association, I find reasonable the proposed modification to Rule 3C(ii). I concur with the Association's assertion that adding the 30-day period for the refund of deposits on operator-owned cable television equipment makes subparagraph (ii) consistent with the basic refund policy described in the regulation. I, therefore, recommend that Rule 3C(ii) be revised

⁵Id. at n.238.

⁶The certification guidelines provide that the local franchising authority must use the FCC's certification form and must certify that it has served copies of the certification request on cable operators. (Id. at 63.) According to the FCC's Order, it will not notify the local franchising authority that certification has become effective; instead, the certification will become effective 30 days after it is filed, unless the FCC otherwise notifies the local franchising authority. (Id. at n.237.)

accordingly.

17. The Commission should, however, decline to modify Rule 5B as proposed by the Association. In the first instance, the Association's concerns about a "due process hearing" are redundant in light of the legal requirement that: (a) all hearings before the Commission must be public; (b) a complete record of all proceedings must be recorded; and (c) the parties to such proceedings are entitled to be heard in person or by counsel and to introduce evidence on their own behalf. 26 Del. C. §503(a), 29 Del. C. Ch. 101. Furthermore, I find inconsistent with the provisions of 26 Del. C. §605(6)⁷ the Association's suggestion to modify Rule 5B with language that would preclude the Commission from taking remedial or punitive action under the new regulations against a cable operator if such action violates that operator's existing franchise.

18. As previously noted, although notice of this proceeding was duly published, there was no input from the general public. As discussed, *supra*, the cable television industry suggested some minor changes to the proposed regulations. Although in attendance at the hearing, neither the Office of the Public Advocate nor the Staff objected to or commented upon the proposed regulations. In

⁷Specifically, 26 Del. C. §605(6) provides that "[r]egulations adopted pursuant to this authority shall supersede any inconsistent (a) Franchise provisions, or (b) sections of this subchapter."

my view, the foregoing confirms the reasonableness of the proposed regulations. They should, therefore, be adopted; and I so recommend.

19. In view of the foregoing, I make the following findings and conclusions:

- A) Pursuant to 26 Del. C. §605(6), the Commission has jurisdiction over this matter.
- B) The Commission has met all of the statutory requirements, as set forth in 29 Del. C. Ch. 101, for adoption of proposed regulations. (Exh. 1; Exh. 2; Tr. at 1-9.)
- C) The Commission has adopted regulations consistent with the FCC regulations and has met all other requirements to enable this Commission to regulate cable television systems subject to its jurisdiction. (§§14-15.)
- D) Rule No. 1 concerning basic rate regulation is reasonable. (§§13-14.)
- E) Rules No. 1-5 concerning Customer Service Standards, as modified herein, are reasonable. (§§16-17.)

III. RECOMMENDATIONS

20. In summary and on the basis of the foregoing findings and conclusions, I make the following recommendations to the Commission:

- A) That the Commission adopt the proposed regulations, attached hereto as Exhibit "A", concerning basic cable television rate regulation and minimum customer service standards as modified herein; and
- B) That the Commission direct its Executive Director to certify to the FCC that all requirements have been met that would enable the Delaware Public Service Commission to regulate cable television systems under its jurisdiction.

21. A proposed form of order that will implement the foregoing recommendations is attached for the Commission's consideration.

Respectfully submitted,

/s/ G. Arthur Padmore
G. Arthur Padmore
Hearing Examiner

Dated: August 18, 1993

PSC REGULATION DOCKET NO. 31

REPORT OF THE HEARING EXAMINER

EXHIBIT "A"

BASIC CABLE TELEVISION RATE REGULATION

RULE NO. 1

In regulating basic cable television service subject to the jurisdiction of the Delaware Public Service Commission, the Commission will follow the Cable Television Rate Regulations promulgated by the Federal Communications Commission.

**CUSTOMER SERVICE STANDARDS
FOR CABLE TELEVISION SYSTEMS
FRANCHISED BY THE
DELAWARE PUBLIC SERVICE COMMISSION**

RULE NO. 1 OFFICE HOURS AND TELEPHONE AVAILABILITY

(A) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week, and shall maintain a written log of all incoming telephone complaints so received.

(i) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(ii) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(B) Under normal operating conditions, telephone answer time by a customer representative, including wait

time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(C) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(D) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(E) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

RULE NO. 2 INSTALLATIONS, OUTAGES AND SERVICE CALLS

Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time measured (and reported to the Commission) on a quarterly basis:

(A) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(B) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly, and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(C) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business

hours for the express convenience of the customer).

(D) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(E) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

RULE NO. 3 COMMUNICATIONS BETWEEN CABLE OPERATORS AND CABLE SUBSCRIBERS

(A) Notifications to subscribers:

(1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(i) products and services offered;

(ii) prices and options for programming services and conditions of subscription to programming and other services;

(iii) installation and service maintenance policies;

(iv) instructions on how to use the cable service;

(v) channel positions of programming carried on the system; and,

(vi) billing, complaint, and refund procedures, including the address and telephone number of the local franchising authority (Delaware Public Service Commission).

(2) Customers will be notified of any changes in rates, programming services, or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to

subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(B) BILLING:

(1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(2) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(C) REFUNDS:

Refund checks will be issued promptly, but no later than either -

(i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) within the next billing cycle or thirty (30) days of the return of the equipment supplied by the cable operator if service is terminated.

(D) CREDITS:

Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

RULE NO. 4 DEFINITIONS

(A) "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week and/or some weekend hours.

(B) "Normal Operating Conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(C) "Service Interruption" means the loss of picture or sound on one or more cable channels.

RULE NO. 5 APPLICATION OF RULES AND VIOLATIONS AND PENALTIES

(A) These regulations shall supersede any inconsistent provision in a franchise except where the term or provision of the franchise requires the franchisee to give greater notice, take additional action or otherwise act in a manner more in the interest of the subscribers in which event the franchise term or provision affording greater protection to the subscribers shall control.

(B) Whenever the Commission shall find, after notice and the opportunity for hearing, that a cable television system franchised by the Commission has violated or is violating any provision of this Regulation, the Commission may enter an order requiring compliance with the Regulation, together with the payment of such fine as the Commission determines to be reasonable and appropriate for such violation. Whenever any person shall fail to comply with the Order of the Commission, entered pursuant to this subsection, the Commission may file a complaint in the appropriate court seeking such relief as is appropriate to compel full compliance.

