

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. CSB-0749-A
)	North Metro Telecommunications
Comcast Cable Communications, LLC)	Commission;
)	North Suburban Communications
Orders Setting Basic Equipment Rates)	Commission;
)	Ramsey/Washington Counties Suburban
Appeal of Local Rate Orders and)	Cable Commission;
)	South Washington County
Petition for Emergency Stay)	Telecommunications Commission

ORDER

Adopted: March 18, 2014

Released: March 19, 2014

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. We dismiss Comcast's appeal of several local cable rate orders with respect to pay-by-phone convenience fees, grant the appeal with regard to charging different rates for different models of converter boxes when equipment costs have been aggregated to calculate a single maximum rate, and deny the appeal with respect to the unbundling of equipment and service rates. On May 14, 2013, Comcast Cable Communications, LLC ("Comcast") filed a consolidated appeal of local cable rate orders issued by four local franchising authorities in Minnesota ("LFAs"). These LFAs are North Metro Telecommunications Commission ("NMTC"), North Suburban Communications Commission ("NSCC"), Ramsey/Washington Counties Suburban Cable Commission ("RWCSCC"), and South Washington County Telecommunications Commission ("SWCTC").¹ Subsequently, Comcast filed a second appeal with regard to a fifth local cable rate order, also issued by NSCC.² The appeals were consolidated ("Consolidated Appeal") procedurally at the request of the parties.³ The local rate orders (together, the "Local Orders") affect several communities in Minnesota and are the result of the LFAs' review of Comcast's 2012 and 2013 FCC Form 1205s ("Comcast 1205s"), which set the maximum permitted rates that Comcast may charge for equipment used to receive the basic service tier ("BST"). Comcast also filed

¹ *Appeal of Local Rate Orders by Comcast Cable Communications, LLC*, filed May 14, 2013 ("First Appeal").

² *Comcast Cable Communications, LLC Appeal of the North Suburban Cable Communications Commission Rate Order*, filed June 3, 2013 ("Second Appeal").

³ See Letter dated March 28, 2013 to John B. Norton, Deputy Chief, Policy Division, Media Bureau from Steven J. Horvitz, Attorney for Comcast and Steven J. Guzzetta, attorney for the LFAs.

requests to stay the Local Orders (“Stay Petitions”).⁴ In this Order, we dismiss one issue in the Consolidated Appeal for lack of jurisdiction, deny the Consolidated Appeal in part and grant it in part, remand the Local Orders for further action consistent with this Order, and dismiss the Stay Petitions as moot pursuant to the Cable Act and our rules.⁵

II. BACKGROUND

2. *Local Rate Appeals.* The Communications Act of 1934, as amended, provides that, where effective competition is absent, rates for the BST and associated equipment are subject to regulation by LFAs.⁶ Rates for the BST and equipment should not exceed rates that would be charged by systems facing effective competition, as determined in accordance with Commission regulations for setting rates.⁷ If the cable operator fails to meet its burden of proof, has improperly calculated its rates, or is unresponsive to requests for relevant information, the franchising authority may use the “best information available” to review the operator's proposed rates and, if appropriate, adjust them and order refunds.⁸

3. Rate orders issued by LFAs may be appealed to the Commission.⁹ In resolving an appeal of a local rate order, the Commission will not conduct a *de novo* review of the rate filings. The Commission will sustain the LFA's decision if it determines that the LFA acted reasonably in applying the Commission's rules.¹⁰

4. *FCC Form 1205.* LFAs have jurisdiction to regulate the cable operator's rates for the installation and lease of equipment used by subscribers to receive the BST.¹¹ All equipment in the customer's home used to receive the BST is subject to rate regulation, regardless of whether such equipment is also used to receive other tiers of regulated or unregulated programming services.¹² The

⁴ *Emergency Petition of Comcast Cable Communications, LLC for Immediate Stay of Local Rate Orders*, filed May 14, 2013; and *Comcast Cable Communications, LLC Emergency Petition for Immediate Stay of the North Suburban Cable Communications Commission Rate Order*, filed June 3, 2013. The LFAs filed oppositions to the Stay Petitions on May 21, 2013 and June 7, 2013, and a consolidated opposition (“Consolidated Opposition”) to the Consolidated Appeal on June 18, 2013. Comcast replied to the stay oppositions and also to the Consolidated Opposition (“Consolidated Reply”).

⁵ See 47 U.S.C. § 543 (b) (5) (B) and 47 C.F.R. § 76.944.

⁶ See 47 U.S.C. §§ 151 et seq.; 47 U.S.C. § 543 (a) (2).

⁷ 47 U.S.C. § 543 (b); 47 C.F.R. § 76.922, *et seq.*

⁸ 47 C.F.R. § 76.937(d); *Falcon Classic Cable*, 15 FCC Rcd 5717, 5720 (2000) ¶ 10; *Western Reserve Cablevision, Inc.*, 14 FCC Rcd 13391, 13398 (1999).

⁹ 47 U.S.C. § 543 (b) (5) (B); 47 C.F.R. § 76.944 (b).

¹⁰ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5731 (1993) (“*Rate Order*”); 9 FCC Rcd 4316, 4346 (1994) (“*Third Reconsideration*”). If the Commission reverses a franchising authority's decision, it will not substitute its own decision, but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal. *Id.* at 5732.

¹¹ 47 U.S.C. § 543 (a) (2) (A), (b) (1), (b) (3) (A).

¹² 47 C.F.R. § 76.923 (a). The BST is defined by statute as “any service tier which includes the retransmission of local television broadcast signals.” See 47 U.S.C. § 522 (3). The BST includes, at a minimum, the broadcast signals (except superstations) distributed by the cable operator, along with any public, educational, or government access

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covered equipment includes converter boxes, remote control units, and inside wiring. Regulated cable operators that have not been found by the Commission to be subject to effective competition compute cost-based equipment and installation rates annually using FCC Form 1205.¹³ The FCC Form 1205s are filed with and are subject to review by the LFAs.

5. *The Consolidated Appeal.* In its Consolidated Appeal, Comcast seeks relief from the Local Orders to the extent they (1) disallow a pay-by-phone convenience fee charged by Comcast to customers who wish to pay their bill over the telephone; (2) require Comcast to have a single rate for different models of converters when the costs for the converters have been aggregated under our rules; and (3) require Comcast to separately calculate and list all rates that are for equipment costs that are included in package rates.

III. DISCUSSION

A. PAY-BY-PHONE FEE

6. We decline to review the reasonableness of the Local Orders with respect to the pay-by-phone convenience fee. In the Local Orders, the LFAs disallow a convenience fee of \$5.99 charged by Comcast to customers who wish to pay their bill over the phone. The LFAs postulate that this fee would have been included in the service rate at the time the cable systems became subject to rate regulation in 1993.¹⁴ The LFAs claim that there is no evidence that the fee was removed or unbundled from the service rate at that time and conclude that charging the fee now would amount to a double recovery of service costs. In its Consolidated Appeal, Comcast argues that the LFAs have exceeded their authority and misapplied the Commission's rate rules by disallowing Comcast's \$5.99 pay-bill-by-telephone convenience fee.¹⁵ Comcast argues that the pay-by-phone option was not available in the relevant systems in 1993 and therefore no costs associated with that option would have been included in the initial rate for cable services.¹⁶ Comcast asks the Commission to reverse that part of the Local Orders that finds that Comcast cannot charge a convenience fee of \$5.99 to subscribers who pay their bill over the telephone.

7. We address this issue first because it involves a question of jurisdiction. Based on our own precedent, and without comment on the merits of either party's arguments, we decline to rule on the reasonableness of the Local Orders with regard to this issue. Instead, we dismiss this part of the Consolidated Appeal because we have determined in previous decisions that these types of fees, such as

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channels required by the local franchising authority, as well as any additional video programming signals or services added to the basic tier by the cable operator. *See* 47 U.S.C. § 543 (b) (7); 47 C.F.R. § 76.901 (a).

¹³ *See* FCC Form 1205, *Determining Regulated Equipment and Installation Costs* (June 1996). *See also* 47 U.S.C. § 623 (a) (2) (cable systems subject to effective competition are not subject to rate regulation).

¹⁴ Consolidated Opposition at 29. When establishing initial regulated rates, cable operators computed their total regulated revenue per subscriber from programming tiers and equipment installations and leases and then adjusted this revenue based on benchmarks that reflected competitive rates or by reducing the revenue by the differential between competitive and non-competitive cable systems. Cable operators then removed subscriber equipment and installation costs and allocated the remaining regulated revenue among then-regulated programming tiers to establish programming tier rates. Equipment prices were established using a cost-based methodology. From that point on, service and equipment rate increases were calculated separately. *See Rate Order*, 8 FCC Rcd 5631 (1993).

¹⁵ First Appeal at 2.

¹⁶ *Id.* at 6.

late fees, returned check fees, and other similar miscellaneous subscriber charges, are within the purview of local franchising authorities and not part of our regulatory scheme.¹⁷ A convenience fee charged for a particular payment method chosen by the subscriber falls into this category of miscellaneous fees.¹⁸ Local authorities may regulate such fees if they are permitted to under State or local consumer protection or other law. Therefore, resolution of this issue would be more appropriately addressed through negotiations with or appeal to the LFAs, or appeal to a State or local court.

8. Thus, we dismiss this part of the Consolidated Appeal and decline to rule on the reasonableness of the Local Orders on this issue.

B. CONVERTER CHARGES

9. We find the Local Orders to be unreasonable with respect to the restriction on separate pricing of aggregated basic-only converters. Our aggregation rules permit an operator to aggregate the costs of basic-only subscribers' equipment.¹⁹ However, the costs of equipment used by basic-only subscribers may not be aggregated with costs of equipment used by non-basic-only subscribers.²⁰ In its FCC Form 1205, Comcast aggregated its basic-only converters, including both high definition ("HD") and standard definition ("SD") converters. Comcast then set two different rates for its converters, both less than the maximum permitted rate ("MPR") calculated on the FCC Form 1205.

10. In the Local Orders, the LFAs require Comcast to file revised FCC Form 1205s to separately justify Comcast's selected rates for HD and SD converters used by subscribers to the basic tier ("basic-only converters"). The LFAs argue that because Comcast aggregated the costs of its HD and SD basic-only converters in its FCC Form 1205 and calculated a single MPR for basic-only converters, it cannot charge separate rates for its HD and SD basic-only converters.²¹ In the Local Orders, the LFAs do not challenge Comcast's aggregation of its basic-only converters but challenge Comcast's ability to charge different prices for the converters once a single MPR has been calculated.²² Comcast claims that its equipment aggregating and discounting practices are fully consistent with Commission rules and precedent.²³

11. We have previously addressed the issue of separate pricing of aggregated equipment in the context of non-basic-only equipment. Significantly, we stated that once equipment has been aggregated,

¹⁷ See, e.g., *Falcon Cablevision*, 11 FCC Rcd 10511 (CSB 1996); *Charter Communications*, 20 FCC Rcd 3503 (MB 2005).

¹⁸ If there were no choice of payment methods, then such a fee might be considered part of the regulated cable service charge because all customers would be required to pay the fee as part of their cable bill.

¹⁹ See *Implementation of Section 301(j) of the Telecommunications Act of 1996, Aggregation of Equipment Costs by Cable Operators*, Report and Order, 11 FCC Rcd 6778, 6789 (1996); 47 C.F.R. § 76.923 (c) (2). See also 47 C.F.R. § 76.923 (c) (1) ("Costs of customer equipment . . . may be aggregated . . . into broad categories . . . of the same type . . . regardless of the levels of functionality . . .")

²⁰ *Id.*

²¹ Consolidated Opposition at 11.

²² In the Consolidated Opposition the LFAs question Comcast's ability to aggregate the basic-only converters in the first place. However, the LFAs did not challenge the aggregation of the basic-only converters in the Local Orders and we do not address that issue in this Order.

²³ Consolidated Reply at 2.

a cable operator “is under no specific obligation to charge the same price for each item of equipment that, on its Form 1205, is aggregated.”²⁴ Subsequently, we re-affirmed that holding and found that a cable operator is “not obliged to establish a particular relationship between the rates for its different kinds of aggregated converters.”²⁵ In other words, once several pieces of equipment of a single type (e.g., converter box) have been grouped together and averaged to determine a single MPR, there is no requirement that a single rate be charged for the equipment or that different rates charged remain in the same proportion to each other as the costs of the equipment. As long as all charges per unit are under or equal to the MPR, and the pricing scheme is not discriminatory,²⁶ our rules do not prohibit different charges for separate classes of converters. Although the equipment at issue in our prior orders was non-basic-only equipment, the same rationale applies to the basic-only equipment here. The establishment of different prices for aggregated equipment is not prohibited under our rules. The only relevant requirement is that all of the separate prices must be equal to or less than the calculated MPR.

12. In the Local Orders, the LFAs also require Comcast to file revised FCC Form 1205s to separately justify Comcast’s charges for specific models of converters used by subscribers to non-basic tiers of service (“non-basic-only converters”). Comcast denies that it is charging different prices for different models of non-basic-only converters.²⁷ We need not resolve the factual dispute as to whether Comcast charges different prices for different models of converter boxes in the communities because, as we previously stated in the orders cited above, our rules do not restrict the separate pricing of aggregated converters as long as all rates are less than or equal to the calculated MPR. For this reason, we find the Local Orders to be inconsistent with our precedent and therefore unreasonable with respect to this issue.

C. EQUIPMENT UNBUNDLING

13. We find the Local Orders to be reasonable with respect to the unbundling of equipment and service prices. In the Local Orders, the LFAs require Comcast to remove all costs for regulated equipment from charges Comcast identifies as the HD Technology Fee, HD DVR Service Fee, and Digital Adapter Additional Outlet Service Fee. In its Consolidated Reply, Comcast offers to separately identify any equipment fees that are included in its service bundles and claims that some of its services do not have an “equipment component.”²⁸ Comcast also argues that, because the service packages are unregulated, the equipment component need not be separately stated.²⁹ The LFAs respond that each of the service fees has at some point included equipment as part of its package even if the name of the fee doesn’t reflect the inclusion of equipment.³⁰

14. Section 76.923(b) of the Commission’s rules requires cable operators to establish separate equipment and programming rates when setting initial regulated rates, by first unbundling (or separating)

²⁴ See *Comcast Cablevision of Dallas, Inc., et al.*, 19 FCC Rcd 10628, 10636 (MB 2004) (approving separate rates for aggregated non-basic equipment).

²⁵ See *Comcast Cable of Dallas, Inc.*, 19 FCC Rcd 17421, 17424 (MB 2004).

²⁶ See 47 U.S.C § 543(e).

²⁷ First Appeal at 6.

²⁸ Consolidated Reply at 17-18

²⁹ *Id.* at 23-25.

³⁰ Consolidated Opposition at 22.

equipment costs from total regulated revenues.³¹ As noted above, regulated cable operators computed their total regulated revenue per subscriber, adjusted this revenue to reflect competitive rates, and then removed equipment and installation costs from the reduced revenue. This unbundling of equipment from service allowed equipment rates to be determined using a cost-based methodology, as required by the Cable Act. The statutory scheme of cost-based equipment prices and competitive service rates has not changed; thus the unbundling requirement remains in effect today.³² Further, Section 629(a) of the Cable Act allows multichannel video programming distributors, including cable operators, to offer subscriber premises equipment for accessing multichannel video programming and other services offered over the system "if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service."³³

15. Although Congress sunset regulation of the cable programming services tier ("CPST") for services provided after March 31, 1999, LFAs were allowed to continue to regulate the BST in systems not found to be subject to effective competition.³⁴ For regulated cable systems not found to be subject to effective competition, all customer premises equipment used to receive the BST remained regulated, but service charges for the CPSTs became unregulated. As a result, the Commission issued several decisions clarifying that certain non-BST services were now unregulated services.³⁵ However, the equipment regulations still apply to all the equipment in a subscriber's home that is provided and maintained by the cable operator and that is used to receive the BST, even if it is also used to receive additional tiers of unregulated services.³⁶ So, even as pricing schemes become more complex with the de-regulation of the CPSTs, the digital transition, and the development of advanced technologies, regulated equipment rates must still be separately calculated and separately listed on rate cards.

16. In light of our equipment unbundling and rate regulation rules, we find the LFAs' requirement that Comcast remove all costs for regulated equipment from Comcast's HD Technology Fee, HD DVR Service Fee, and Digital Adapter Additional Outlet Service Fee as stated in the Local Orders to be reasonable.

IV. STAY PETITIONS

17. Because we decide herein the Consolidated Appeal on its merits, we decline to rule on the Stay Petitions and dismiss them as moot.

³¹ 47 C.F.R. § 76.923 (b). See FCC Form 1200, *Setting Initial Maximum Permitted Rates for Regulated Cable Services Pursuant to Rules Adopted February 22, 1994*, "First-Time Filers Form" (May 1994).

³² We disagree with Comcast's argument that the Commission's CableCARD rule, 47 C.F.R. 76.1205 (b) (5)(ii)(B)(2), supports their claim that the unbundling rules no longer apply. That section reiterates that a cable operator must separately disclose to consumers in a conspicuous manner, with written information, any fees for the rental of CableCARDS and operator-supplied navigation devices. See 47 C.F.R. 76.1205 (b)(5)(i). See also, 47 C.F.R. § 76.1206.

³³ 47 U.S.C. § 549 (a).

³⁴ 47 U.S.C. § 543 (e) (4).

³⁵ See *Comcast Cablevision of Dallas, Inc.*, 19 FCC Rcd 10628 (MB 2004); *Comcast Cable of Indiana/Michigan/Texas, Inc.*, 19 FCC Rcd 16344 (MB 2004); *Comcast Cablevision of Dallas, Inc.*, 19 FCC Rcd 22687 (MB 2004)

³⁶ See 47 C.F.R. § 76.923 (a); see also 47 U.S.C. § 543 (b) (3).

V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that the Petitions for Emergency Stay ARE DISMISSED AS MOOT.

19. IT IS FURTHER ORDERED that the issue of the \$5.99 convenience fee is dismissed, and, to that extent, the Consolidated Appeal IS DISMISSED IN PART.

20. IT IS FURTHER ORDERED that the Consolidated Appeal IS GRANTED IN PART AND DENIED IN PART, as discussed above, and the Local Orders ARE REMANDED to the local franchising authorities for further action consistent with this Order.

21. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton,
Deputy Chief, Policy Division
Media Bureau