

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Comcast Cable)
Communications, Inc.)
)
Final Resolution of)
Cable Programming Service)
Rate Complaints)
)

ORDER

Adopted: December 1, 1995

Released: December 1, 1995

By the Commission:

I. INTRODUCTION

1. The Commission has before it a Proposed Resolution submitted by Comcast Communications, Inc. ("Comcast") that will resolve 164 cable rate complaints filed against Comcast regarding the rates that Comcast charged for cable programming services from September 1, 1993 through July 14, 1994, including complaints as to which the Cable Services Bureau ("Bureau") has issued orders, and 104 cable programming services cost of service complaints covering the period September 1, 1993 through the present. Together these cases affect service for approximately 1,335,000 subscribers. For the reasons stated below, and based upon our review of the record, we find that the Resolution¹, including the modification, serves the interests of Comcast's subscribers by, among other things, bringing finality and stability to its cable programming service tier ("CPST") rates and improving the availability of customer programming choices. We also believe that adoption of the Resolution is consistent with the Commission's responsibility under the Cable Television

¹ The Resolution is attached to this Order as Attachment A.

Consumer Protection and Competition Act of 1992 ("1992 Cable Act") to ensure that consumers' interests are protected in the receipt of cable services.

II. BACKGROUND

2. The 1992 Cable Act gave the Commission and local franchising authorities ("LFAs") jurisdiction over the cable programming and equipment rates of cable systems that did not face effective competition, as defined by that Act. Specifically, the 1992 Cable Act provides that with respect to cable systems that are not subject to effective competition, LFAs may regulate the rates for the basic service tiers ("BSTs") pursuant to guidelines established by the Commission, and that the Commission may regulate the rates for the CPSTs.² In enacting the legislation, Congress stated its intent that the 1992 Cable Act be implemented to ensure that "... consumer interests are protected in the receipt of cable service."³

3. On August 10, 1995, the Commission adopted an Order⁴ instructing the staff of the Bureau to serve all persons who had complained about Comcast's rates for cable programming services ("complainants") with the Proposed Resolution and provide an opportunity for them to comment on the proposal. The Proposed Resolution was also served on each LFA that did not file a complaint but was the regulator for a franchise area for which a complaint had been filed. All served persons were allowed 30 days in which to provide comments. In response to a request from the New Jersey Department of Law and Public Safety ("New Jersey"),⁵ a complainant as well as the LFA for communities in the State of New Jersey, the deadline for submitting comments was extended until September 25, 1995.

4. Under the Proposed Resolution, Comcast's systems using cost of service rate justifications ("cost of service systems") will agree to forego permanently inflation and external cost adjustments in the amount of \$3.4 million. This consists of (1) adjustments for inflation for the period September 1, 1993 through June 30, 1994 that could have been passed through to subscribers as early as October 1, 1994 and (2) adjustments for programming cost increases for the period prior to January 1, 1995 which could have been passed through to subscribers as early as the first calendar quarter of 1995.

² Communications Act of 1934, as amended, § 623(a)(2), 47 U.S.C. § 543(a)(2).

³ Pub. L. No. 102-385 § 2(b)(4), 106 Stat. 1460 (1992); *see also* H.R. Rep. No. 628, 102d Cong. 2d Sess. at 34 (1992).

⁴ *Comcast Cable Communications, Inc.*, FCC 95-353 (Cab. Serv. Bur., released August 1, 1995).

⁵ Letter from New Jersey Department of Law and Public Safety to the Federal Communications Commission (August 30, 1995).

5. Under the proposal, at any time at its discretion, Comcast may move a maximum of any four regulated services to a single Migrated Product Tier ("MPT") on each of its cost of service systems identified as part of the Proposed Resolution. These channels initially will be priced at the same level, on a per channel basis, as they would have been priced had they remained on that franchise's regulated tiers. Comcast may not require subscription to any other tier, other than the BST, as a condition for subscribing to the MPT and may not require subscription to the MPT as a condition for any other tier. On or after April 1, 1997, Comcast may reclassify the MPT in each cost of service system as a New Product Tier ("NPT"), and that NPT will receive the same treatment as other NPTs.⁶

6. For systems where Comcast filed cost of service justifications, Comcast's past CPST rates were found to be excessive and refunds were ordered. Comcast was able to justify its current CPST rates for all cost of service systems. For systems in which Comcast filed benchmark justifications ("benchmark systems"), it was concluded that Comcast's past rates were excessive and refunds were ordered. The Proposed Resolution does not address the benchmark system's current rates; however, we have agreed that the September 1, 1993 channel counts and March 31, 1994 channel counts for these systems are deemed proper for purposes of setting current rates.

7. Under the Proposed Resolution, Comcast's refund liability, for its benchmark and cost of service franchises combined, is approximately \$6.6 million plus interest of approximately \$420,000 as specified in Exhibits 3 and 4 to the Proposed Resolution. Comcast will provide refunds in the form of credits on subscribers' bills, beginning within 90 days of the adoption date of this Order. The refunds will be at a maximum amount of one dollar per month and a minimum amount of \$.50 until such time as full payment is made. However, under the Proposed Resolution, the payment schedule may not exceed 12 months in any case. Interest will be added to this amount calculated throughout the entire pay-out period.

8. Comcast may, under the Proposed Resolution, avail itself of any applicable modifications of any law or regulation governing CPST rates, except that Comcast is required to provide refunds pursuant to the terms of the Proposed Resolution. Comcast does not admit that it violated, or failed to conform to, any applicable laws, rules or regulations by agreeing to the terms of the Proposed Resolution.

III. SUMMARY OF COMMENTS

9. We received comments from 21 persons that were complainants or LFAs. Some commenters raised issues or concerns without taking any position on the Proposed Resolution. Seven of the comments received were from LFAs.

⁶ 47 C.F.R. § 76.987 and subsequent amendments thereto.

10. Many comments were supportive of the Proposed Resolution. The City of Fullerton, California stated that the Proposed Resolution was "a reasonable administrative approach to get money back to the majority of overcharged subscribers."⁷ Likewise, the City of Callaway, Florida supported the Proposed Resolution stating that it puts the interests of the citizens of Callaway first. In addition, while requesting clarification with respect to certain provisions, New Jersey wrote that "[i]n general, the Board supports the settlement process as outlined in the Proposed Resolution."⁸

11. New Jersey and the City of Tallahassee, Florida ("Tallahassee") questioned how the refund methodology was calculated and the rates were established.⁹ Tallahassee and the City of Mount Clemens, Michigan ("Mount Clemens")¹⁰ expressed concern that the Proposed Resolution preempted local authority to regulate the BST. Tallahassee also contended that the Proposed Resolution could be read to bind LFAs in their determination of equipment basket pricing and, therefore, exceeds the Commission's authority under the 1992 Cable Act. Tallahassee additionally questioned the Commission's statutory authority to enter into this type of proposal and further argued that the Proposed Resolution was arrived at based on *ex parte* negotiations. Some commenters questioned the method for paying refunds under the Proposed Resolution. The Town of Lantana, Florida ("Lantana") alleges that its subscribers are entitled to refunds though none are provided for them in the Proposed Resolution. These questions will be addressed below.

IV. DISCUSSION

A. Authority and Procedures in Negotiating the Proposed Resolution

12. As an initial matter, we set forth the Commission's regulatory authority to approve the Proposed Resolution. The Communications Act provides the Commission with wide discretion to resolve rate cases, including through the settlement process. Section 4(i) of the Communications Act authorizes the Commission to "perform any and all acts . . . not inconsistent with [the] Act, as may be necessary in the execution of its functions."¹¹ Section 4(j) provides that the "Commission may conduct its proceedings in such manner as will best

⁷ Letter from Edward D. Paul to Federal Communications Commission (September 18, 1995).

⁸ Comments of New Jersey at 1.

⁹ Comments of Tallahassee at 2-5. See Comments of New Jersey at 2.

¹⁰ See Comments of Tallahassee at 7-8. Comments of Mount Clemens at 4-5.

¹¹ 47 U.S.C. § 154(i).

conduce to the proper dispatch of business and to the ends of justice. . . ."¹² We believe that §§ 4(i) and 4(j) allow the Commission to consider proposed resolutions to resolve rate complaints. Proposed resolutions are not in any way inconsistent with the 1992 Cable Act, which requires the Commission to adopt regulations creating "fair and expeditious procedures for the receipt, consideration, and resolution of complaints"¹³ since they protect consumers' statutory interests in being charged CPST rates that are not unreasonable. They are also "necessary" to the execution of the Commission's business and the ends of justice because they conserve regulatory and private resources and resolve large numbers of proceedings, while ensuring that consumers' interests in CPST rates that are not unreasonable are protected. The Commission's authority to resolve cases has been affirmed in an analogous context.¹⁴

13. We further believe that Congress' desire to simplify cable rate regulation supports the adoption of an expeditious means of resolving complaints that will afford adequate protection for the subscribers, complainants and operators. Thus, the Commission has authority to consider the Proposed Resolution and to determine, after review and consideration of comments, that the rates set forth in the Proposed Resolution are not unreasonable. Nonetheless, to the extent the submission of the Proposed Resolution and our action on it requires a waiver of our rules, we find such a waiver to be in the public interest because the Proposed Resolution will ensure the expeditious resolution of a large number of rate complaints while protecting consumers' statutory interest in CPST rates that are not unreasonable.

14. Although we do not rule on the merits of each of Comcast's claims, we believe that it is fully consistent with the 1992 Cable Act to consider the benefits of avoiding the delays and uncertainty of litigation in setting rates within the range of reasonableness. Indeed, the courts have long recognized that regulatory agencies have broad discretion to choose among ratemaking methods and procedures in ratemaking determinations, provided that the rates are within a range of reasonableness.¹⁵

15. Tallahassee challenges the Proposed Resolution on the basis that it was arrived at based on unlawful *ex parte* negotiations.¹⁶ We again disagree with Tallahassee's position.

¹² 47 U.S.C. § 154(j).

¹³ 47 U.S.C. § 543(c)(1)(B).

¹⁴ See *New York State Dep't of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993).

¹⁵ See *FERC v. Pennzoil Producing Co.*, 439 U.S. 508, 517 (1979); *Permian Basin Area Rate Cases*, 390 U.S. 747, 797 (1968).

¹⁶ See Comments of Tallahassee at 6-7.

Tallahassee is correct that in rate complaint cases, the proceedings are restricted.¹⁷ Consequently, the parties generally may not make *ex parte* contact with the Commission at all. Generally, the only permitted communications are in writing with service to all interested parties.

16. An important exception to this general rule against *ex parte* contacts in restricted proceedings is in circumstances where the Commission staff requests further information of one of the parties for the resolution of issues or to obtain further information as provided in 47 C.F.R. § 1.1204(b)(7):

(b) *Exempt Ex Parte Presentations.* The following types of *ex parte* presentations are exempt from the prohibitions and requirements in § 1.1206 (non-restricted proceedings) and § 1.1208 (restricted proceedings) as follows:

... (7) The presentation is requested by the Commission or staff for the clarification or adduction of evidence or for resolution of issues, and the proceeding is a restricted proceeding which has not been designated for hearing, a non-restricted proceeding or an exempt proceeding. See 47 C.F.R. § 1.1204(b)(7).

17. The purpose of this exception is to permit the staff to seek the narrowing of issues in a proceeding, to attempt to settle a case or to supplement the record, so that the proceeding can be resolved on the basis of a more complete record, or through more expeditious procedures.¹⁸ The Note to the *ex parte* exception in 47 C.F.R. § 1.1204(b)(7) further clarifies that if any such contact elicits new information, that information must be served on all parties to the proceeding.¹⁹ The purpose of this provision is to ensure that interested parties have fair notice of the substance of the new information that has been provided and thus have a fair opportunity to provide their own views on the information. Under this standard, any presentations on the merits of the case that have not been included in previous pleadings must be placed in the record. The legality of these procedures was upheld in *New York State Department of Law v. FCC*.²⁰

18. In the instant proceeding Comcast contacted the Bureau staff expressing an interest in discussing a global resolution of the rate complaints. Because this conversation did

¹⁷ 47 C.F.R. § 1.1208(B).

¹⁸ See 47 C.F.R. § 1.1202(a).

¹⁹ See 47 C.F.R. § 1.1204(b)(7), Note. If service would be unduly burdensome because of the number of parties involved or because the materials relating to the presentation are voluminous, the Commission may waive such service by issuing a public notice notifying parties that such materials are available for public inspection.

²⁰ 984 F.2d 1209 (D.C. Cir. 1993).

not address the "merits or outcome" of the proceedings, it was not a communication covered by the Commission's *ex parte* rules.²¹ Subsequent to this contact, at the request of the Bureau staff, Comcast provided new information. Pursuant to a Bureau public notice, information that was not already reflected in the pleadings, was placed in the record of the proceeding so as to allow comment on it.²² Consistent with the Note to the *ex parte* exception in 47 C.F.R. § 1.1204(b)(7), the service provision was waived by the Bureau because it determined that service of this material on all parties to the proceeding would be unduly burdensome due to the large number of parties and volume of material involved. Instead a public notice was issued detailing the new information in the record.²³ All complainants were served with the Proposed Resolution for the purpose of soliciting comment. In addition, LFAs that were not complainants, and therefore not parties to the proceedings, were served for the purpose of providing an opportunity to comment where a proceeding existed with respect to their franchise areas. The Commission provided 30 days for comment on the Proposed Resolution and extended the comment period for an additional 15 days pursuant to an LFA request. We conclude that the Bureau correctly followed the *ex parte* rules and all interested parties were given fair participation rights.

19. Tallahassee objected that the Proposed Resolution would allow Comcast to avoid admitting that it violated the Commission's rules.²⁴ The Commission believes that the prompt and final resolution of the issues regarding Comcast's CPST rates outweigh any benefits of forcing the operator to admit liability given that the rate complaints are resolved herein, refunds are paid to subscribers and reasonable rates are set for the future. The Resolution attempts to reach a fair and equitable solution of all of the issues in a manner which is both reasonable and fair to all parties. This goal is achieved regardless of whether Comcast actually admits liability.

20. Tallahassee and New Jersey both questioned the methodology used by the Bureau to calculate Comcast's refund liability. In order to reach a fair resolution, many factors were identified and considered. Among the factors considered with respect to the benchmark systems were Comcast's claims as to the appropriate number of regulated and satellite channels on its system for purposes of setting rates under the benchmark methodology. Factors considered with respect to calculating refund liability in Comcast's cost of service systems included inflation and external cost adjustments, the treatment of intangible assets, equipment, rate of return on the rate base, the treatment of the depreciation of assets, and income tax allowances. These factors, and others, such as expeditiously providing refunds to

²¹ See 47 C.F.R. § 1.1202(a).

²² See Public Notice "Additional Information Available for Public Inspection on Comcast Communications, Inc.," (August 11, 1995).

²³ See *id.*

²⁴ See Comments of Tallahassee at 2.

consumers, bringing certainty to rates, ending litigation and the addition of new services without price increases, were weighed and balanced to determine an equitable resolution in the public interest. Consistent with our obligations under Section 623(c) of the Communications Act, we also find the rates established in the Proposed Resolution are not unreasonable. Therefore, we believe that we have satisfactorily taken into account all relevant statutory and public interest factors in approving the terms of the Proposed Resolution and, therefore, the terms are in compliance with the 1992 Cable Act.

21. Both Tallahassee and Mount Clemens raised a concern that the wording of the Proposed Resolution could be interpreted to extend to BSTs and to enable Comcast to raise its rates for BSTs. We hereby clarify that the Proposed Resolution is not intended to interfere with the authority of local franchising authorities to regulate BST rates in their respective jurisdictions. Moreover, in order to address this concern, Comcast has agreed to modify Paragraph 13 of the Proposed Resolution, which will now read in its entirety as follows (the italicized language being the addition):

The Resolution Order shall affirmatively state that any and all waivers of the Commission's rules, and any modifications to Commission forms, necessary to effectuate these terms are deemed to be granted. The Commission will not assert in any proceeding that Comcast's compliance with the terms of this Resolution violates any Commission rule or order, and, in any proceeding before the Commission brought by a third party, a showing by Comcast that it has complied with these terms shall constitute a defense to any claim that Comcast's actions in meeting the terms constitute a violation of any applicable Commission rule or order. *Notwithstanding the foregoing, nothing in this Resolution should be construed to preempt the authority of a local franchising authority to regulate the basic service tier and related equipment rates, consistent with the Commission's regulations and orders.*

We believe that this additional revision should alleviate the concerns raised.

22. Mount Clemens objected to the provision permitting Comcast to make refunds by issuing credits on subscribers' bills. Mount Clemens believes that the refunds should be paid to subscribers in the form of cash. The Commission's rules provide that in cases of refund liability to subscribers due to overcharges, "the cable operator [has] the option of implementing the refund by means of a prospective percentage reduction in the unreasonable service rate to cover the cumulative overcharge".²⁵ In addition, subscribers are not penalized in any way through the use of the credit method. We believe that enabling Comcast to pay refunds through the use of multiple credits does not adversely affect subscribers. Under the Proposed Resolution, the length of the pay-out period is limited and interest is paid

²⁵ *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket 92-266, 8 FCC Rcd 5631 (1993) ("Rate Order").

throughout the pay-out period. Therefore, we do not believe any further change to the Proposed Resolution is warranted.

23. Comments were received from one complainant who had discontinued service and a second who had moved out of the service area. These complainants request the refunds they would have received as subscribers. The Commission's regulations allow an operator, at its discretion, to implement a refund in one of two ways -- either through identification of actual subscribers or through a prospective percentage reduction of the rates to the class of subscribers that currently subscribe to the service.²⁶ Operators face constant changes to their subscriber base making it difficult, if not impossible, to identify all such former subscribers.²⁷ We are convinced that the expense of giving refunds to all former subscribers in the areas affected and identifying the exact parties eligible for a refund would be large and unduly burdensome to Comcast. We conclude that the payment method proposed for the refunds, as credits to current subscribers, is consistent with our rules. Therefore, it is appropriate for Comcast to refund amounts owed in this manner.

24. Lantana had previously filed a complaint with respect to its CPST rates which were subsequently the subject of a Bureau order.²⁸ In that order the Bureau determined that there was an overcharge, but the overcharge was *de minimis* and therefore no refund was ordered. Lantana contends its subscribers should be incorporated within the Proposed Resolution as Eligible Subscribers²⁹ and be entitled to refunds because subscribers in the Town of West Palm Beach, Florida, which is served by the same headend as Lantana, are Eligible Subscribers under the Proposed Resolution and will receive a refund.

25. Our review of Comcast's Form 393 filings for Lantana and West Palm Beach shows that the refunds to the two communities should be different. The filings cover different time periods and the variance between the permitted and actual rates vary significantly between the two jurisdictions. Thus, the towns warrant different treatment and the assertion that subscribers in Lantana are somehow being penalized is incorrect.

²⁶ 47 C.F.R. § 76.943(d).

²⁷ See Rate Order at 5866.

²⁸ *In the Matter of Comcast Cablevision of West Palm Beach, Inc. and Town of Lantana, Florida*, DA 95-689 (Cab. Serv. Bur., released April 6, 1995) ("Lantana Order").

²⁹ See Proposed Resolution of Comcast Cable Communications, Inc. para. 6(f).

VI. CONCLUSION AND ORDERING CLAUSES

26. For the reasons discussed above, we conclude that it is in the public interest to adopt the Proposed Resolution with the modification set forth in Paragraph 22 above.

27. We further conclude that the maximum permitted rates as reflected by Comcast's Form 1200 series filings, as indicated for the CUIDs listed in Exhibit 1 to the Proposed Resolution, are justified and are therefore not unreasonable.

28. Accordingly, for the reasons set forth above, **IT IS ORDERED** that the Resolution attached to this Order as Attachment A, including the modification noted in this Order, **IS ADOPTED**.

29. **IT IS FURTHER ORDERED** that all rate complaints under the jurisdiction of the Commission against Comcast Cable Communications, Inc., against its benchmark systems for the period September 1993 through July 15, 1994 **ARE GRANTED**, to the extent indicated herein, and **DENIED** in all other respects.

30. **IT IS FURTHER ORDERED** that all rate complaints under the jurisdiction of the Commission against Comcast Cable Communications, Inc., against its cost of service systems **ARE GRANTED**, to the extent indicated herein, and **DENIED** in all other respects.

31. **IT IS FURTHER ORDERED** that all orders issued by the Cable Services Bureau and the Commission with respect to CPST rate complaints against Comcast's benchmark systems, as indicated on Exhibit 2 of the attached Resolution, for the period between September 1993 through July 15, 1994 are vacated and are superseded by this Resolution.

32. **IT IS FURTHER ORDERED** that all orders issued by the Cable Services Bureau and the Commission with respect to CPST rate complaints against Comcast's cost of service systems, as indicated on Exhibit 1 of the attached Resolution, for the period between September 1993 through the present are vacated and are superseded by this Resolution.

33. **IT IS FURTHER ORDERED** that the Cable Services Bureau is given delegated authority to oversee implementation of this Resolution Order.

34. **IT IS FURTHER ORDERED** that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

TERMS OF RESOLUTION

I. Introduction

1. These terms constitute a resolution of certain cable programming service complaints pending against Comcast Cable Communications, Inc. and its affiliates and subsidiaries (collectively, "Comcast").

II. Background

2. Complaints have been filed with the Federal Communications Commission ("Commission") pursuant to Section 76.950 of the Commission's regulations, 47 C.F.R. § 76.950, concerning the cable programming service ("CPS") rates charged by Comcast in the communities listed in Exhibit 1 and Exhibit 2. Comcast filed cost-of-service rate justifications for CPS rates charged in the communities listed on Exhibit 1 and benchmark rate justifications on FCC Forms 393 for CPS rates charged in the communities listed on Exhibit 2.

3. The Commission's Cable Services Bureau ("Bureau"), under delegated authority, has reviewed these cost-of-service rate justifications and benchmark rate justifications on FCC Forms 393 pursuant to the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"). As a result of that review, the Bureau determined that certain refunds were owed to subscribers.

4. Comcast maintains that it has followed the letter and spirit of the Commission's rate regulations and the 1992 Cable Act in its cost-of-service and benchmark rate justification filings and that no refunds are owed to subscribers.

5. Comcast desires to resolve the outstanding CPS benchmark and cost-of-service rate complaints.

III. Definitions

6. As used herein, the following definitions will apply:

- (a) "Benchmark Franchises" are those cable franchises in which Comcast filed benchmark rate justifications, as listed on Exhibit 2.
- (b) "Cost-of-Service Franchises" are the cable franchises in which Comcast filed cost-of-service rate justifications, as listed on Exhibit 1.

- (c) "CPS" means cable programming service.
- (d) "Current Rates" means the CPS rates that are in effect as of the Effective Date in each of the cost-of-service franchises.
- (e) "Effective Date" means the date on which the Commission issues an order approving this Resolution.
- (f) "Eligible Subscribers" means CPS subscribers of record in those Comcast cable franchises listed on Exhibits 1 and 2 on the first day of each monthly billing cycle.
- (g) "Going-Forward rules" means the Commission's rules adopted in the *Sixth Order on Reconsideration*, 10 FCC Rcd 1226 (1994), including all subsequent clarifications and amendments thereto.
- (h) "Interest" means the Internal Revenue Service rate of interest for tax overpayments.
- (i) "March 31, 1994 channel counts" means the number of regulated and non-broadcast channels entered on Modules A and C of the FCC Forms 1200 which Comcast filed with the Commission.
- (j) "March 31, 1994 Rates" means the rates entered on Module A of the FCC Forms 1200 which Comcast filed with the Commission.
- (k) "Migrated Product Tier" or "MPT" means a tier consisting of up to four (4) services moved from existing tiers and to which other services may be added, as described below in paragraph 12.
- (l) "Refunds" means credits on subscriber bills.
- (m) "Resolution Order" means an order issued by the Commission approving the terms of the Proposed Resolution.
- (n) "September 1, 1993 channel counts" means the number of regulated and satellite channels entered on Module H, Line H5 and H7 of the FCC Forms 1200 which Comcast filed with the Commission.

IV. Terms

7. Comcast accepts the jurisdiction of the Commission over it and the subject matter of these rate resolutions for purposes of the Resolution Order approving these terms.
8. All Comcast's Form 393 benchmark CPS rate cases for the period through July 14, 1994, and cost of service CPS rate cases for the period through the Effective Date are finally resolved under the terms provided herein.
9. Comcast agrees that these terms shall be incorporated by reference in the order formally adopting these terms. After the Resolution Order is adopted, Comcast and the Commission will each actively defend the Resolution Order against any appeal of, or other legal challenge, to the Resolution Order by any third party. Comcast and the Commission will reasonably cooperate with the other in any such defense of these terms.
10. Comcast agrees that any violation of the Resolution Order shall constitute a violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order.
11. These terms are for purposes of settlement only, and do not constitute an admission by Comcast of any violation, or failure to conform to, the 1992 Cable Act, the Commission's rules, or any other law, rule, or policy.
12. In consideration for the resolution of Comcast's Form 393 benchmark CPS cases for the period through July 14, 1994, and Cost-of-Service CPS cases for the period through the Effective Date, Comcast hereby agrees to the following terms, conditions and procedures, which Comcast believes will facilitate a fair and expeditious resolution of those matters in a manner that would serve the public interest:
 - (a) Comcast will issue Refunds to the Eligible Subscribers served by Comcast's Cost-of-Service Franchises in the amounts listed on Exhibit 3. Refunds will be reflected as monthly credits of a maximum of \$1.00 and a minimum of \$.50 on subscriber bills over a period until full payment is made, except that the last payment may be credited in an amount less than \$0.50 on subscriber bills; but in all cases such payment period shall not exceed 12 months. The total Refund over all Cost-of-Service Franchises, as specified on Exhibit 3, includes Interest for the period from the respective initial dates on which Forms 329 were filed through the last date Refunds will be issued;
 - (b) Comcast will issue Refunds to Eligible Subscribers served by Benchmark Franchises in the amounts specified on Exhibit 4. Refunds will be reflected as monthly credits of a maximum of \$1.00 (with the exception of the Danbury, Connecticut franchise where monthly Refunds may exceed \$1.00) and a minimum of \$.50 on subscriber bills over a period until full payment is made,

except that the last payment may be credited in an amount less than \$0.50 on subscriber bills, but in all cases such payment period shall not exceed 12 months. The total Refund over all Benchmark Franchises, as specified on Exhibit 4, includes Interest for the period through the last date Refunds will be issued;

- (c) Comcast will provide initial Refunds to Eligible Subscribers within 90 days from the Effective Date;
- (d) The Commission will issue an Order as of the Effective Date finding that the Current Rates, as specified on Exhibit 3, in Comcast's Cost-of-Service Franchises are not unreasonable;
- (e) Comcast will set rates in its Cost-of-Service Franchises as of the Effective Date as specified on Exhibit 3, and may adjust rates for inflation incurred subsequent to June 30, 1994, and programming cost increases incurred subsequent to December 30, 1994 pursuant to the Commission's regulations. The Current Rates are hereby deemed not unreasonable. Comcast will permanently forego adjustments for inflation for the period September 1, 1993 through June 30, 1994 which could have been passed through as early as October 1, 1994. Comcast will permanently forego all adjustments for programming cost increases for which it was entitled for the period prior to January 1, 1995 which could have been passed through during the first calendar quarter of 1995.
- (f) Pursuant to the Commission's regulations, Comcast may adjust CPS rates in its Benchmark Franchises as specified on Exhibit 2. The September 1, 1993 channel counts and March 31, 1994 channel counts for Comcast's Benchmark Franchises are hereby deemed proper.
- (g) Comcast, at any time at its discretion, may move a maximum of any four (4) regulated services to a single "Migrated Product Tier" on each of its Cost-of-Service Franchises as identified on Exhibit 1. Comcast may not require the subscription to any other tier, other than the Basic service tier, as a condition for subscribing to the MPT and may not require subscription to the MPT as a condition for subscription to any other tier. The Commission acknowledges that the migration of these services is permitted under Section 76.981(b) of the Commission's rules, does not constitute a negative option, and when the MPT is offered, Comcast will not be required to re-market that MPT to existing subscribers who previously received the services which were migrated.
- (h) Comcast will set the initial rate for a Cost-of-Service Franchise's MPT at the same level, on a per channel basis, as is set for that franchise's regulated tiers under subparagraph (e) above. Comcast may add any number of new services to an MPT and may increase the price for the MPT by up to \$0.20 plus the

amount of the license fee, for each new service added. Comcast may increase the price of an MPT for inflation and external costs consistent with the Commission's rate regulations governing CPS tiers, and these new services shall not be considered new services added for purposes of the limit on rate increases under the Going-Forward rules.

- (i) On or after March 1, 1997, Comcast may reclassify the MPT in each Cost-of-Service Franchise as a New Product Tier ("NPT"), as defined in 47 C.F.R. § 76.987, including subsequent clarifications or amendments, which will be treated as all other NPTs. This reclassification is consistent with Section 76.981(b) of the Commission's rules, will not constitute a negative option and Comcast will not be required to re-market the reclassified NPT to existing subscribers to the MPT. Nothing in this Resolution shall be construed to prevent Comcast from creating other NPTs and/or offering a la carte channels pursuant to the Commission's rules.
- (j) Comcast will add two new services to the CPS tier of its New Haven, Connecticut franchise, within 60 days from the Effective Date. These services will be added without any increase in rates attributed to the addition of these two services except that Comcast may adjust rates to reflect prospective external cost increases. The addition of these two services shall not be considered new services for purposes of the limit on rate increases under the Going-Forward rules.
- (k) As of the Effective Date, the Resolution vacates two Bureau orders, *Comcast Cablevision of Maryland, Inc.*, DA 94-1153 (rel. Nov. 9, 1994), and *Comcast Cablevision of Tallahassee, Inc.*, DA 94-1480 (rel. Dec. 13, 1994), which concern the CPS rates charged in community units MD0080 through MD0100 and FL0033, respectively. This Resolution supersedes the Bureau Orders described in this paragraph. Comcast will be permitted to adjust CPS rates in the communities served by its Tallahassee and Baltimore systems at any time after the Effective Date without prior Commission approval, subject to the terms of this Resolution and any future review by the Commission of a new CPS complaint.
- (l) As of the Effective Date, Comcast will withdraw (i) the Applications for Review filed on January 12, 1995 and December 9, 1994, respectively, and (ii) the Petitions for Stay filed on January 31, 1995 and December 22, 1994, respectively, with the Commission concerning the Bureau's orders for Comcast's Tallahassee and Baltimore franchises.
- (m) The terms of this Proposed Resolution shall be provided to each complainant that filed FCC Form 329 pursuant to Section 76.950 of the Commission's rules, 47 C.F.R. §76.950 for their comment.

- (n) Except as provided in paragraph (o) hereof, these terms may not be terminated or modified without the mutual written agreement of Comcast and the Commission. The Commission's consent to any such modification shall be demonstrated by an order issued by the Bureau or, at the Commission's option, by the Commission itself.
- (o) Notwithstanding the terms hereof, Comcast may avail itself of any applicable modifications of any law or regulation governing the CPS rates charged in any Comcast franchise area listed on Exhibits 1 and 2, including the adoption by the Commission of any regulation governing rates as applied to the cable industry generally. These terms shall be superseded upon the effective date of such law or regulation, except that Comcast shall provide Refunds to Eligible Subscribers pursuant to these terms.

13. The Resolution Order shall affirmatively state that any and all waivers of the Commission's rules, and any modifications to Commission forms, necessary to effectuate these terms are deemed to be granted. The Commission will not assert in any proceeding that Comcast's compliance with these terms of the Agreement violates any Commission rule or order, and, in any proceeding before the Commission brought by a third party, a showing by Comcast that it has complied with these terms shall constitute a defense to any claim that Comcast's actions in meeting the terms constitute a violation of any applicable Commission rule or order. Notwithstanding the foregoing, nothing in this Resolution should be construed to preempt the authority of a local franchising authority to regulate the basic service tier and related equipment rates, consistent with the Commission's regulations and orders.

14. These terms shall become effective when the Commission issues the Resolution Order approving these terms.

15. If any provision, clause, or part of this Resolution is invalidated, the remainder of this Resolution shall not be affected thereby and shall remain in effect; provided, however, that if such invalidation is material to this Resolution, Comcast and the Commission shall attempt in good faith to reconstitute the Resolution in a form that is, to the maximum extent possible, consistent with the original intent of the Resolution.

**COMCAST CABLE COMMUNICATIONS, INC.
COMMUNITY UNIT IDENTIFICATION NUMBERS
COST OF SERVICE SYSTEMS**

<u>SYSTEM</u>	<u>FRANCHISE AREA</u>	<u>CUID. NO</u>
Clinton, CT	Clinton	CT0086
	Deep River	CT0087
	Essex	CT0088
	Chester	CT0089
	Killingworth	CT0090
	Haddam	CT0091
	Durham	CT0092
	Old Saybrook	CT0093
	Westbrook	CT0094
Groton, CT	Groton	CT0071
	Ledyard	CT0072
	North Stonington	CT0073
	Stonington	CT0074
	Voluntown	CT0075
New Haven, CT	New Haven	CT0049
	Hamden	CT0050
	West Haven	CT0051
Burlington, NJ	Beverly City	NJ0445
	Burlington City	NJ0112
	Burlington Township	NJ0108
	Cinnaminson Township	NJ0305
	Delanco Township	NJ0442
	Delran Township	NJ0444
	Edgewater Park Township	NJ0071
	Palmyra Borough	NJ0306
	Riverside Township	NJ0107
	Riverton Borough	NJ0304
	Westhampton Township	NJ0073
	Willingboro Township	NJ0074
	Bordentown	NJ0511
Bordentown Township	NJ0461	
Central, NJ	East Brunswick	
	East Brunswick Township	NJ0021

Monroe Township	NJ0372
Spotswood Borough	NJ0440
Helmetta Borough	NJ0439
Jamesburg Borough	NJ0438
Highlands Borough	NJ0464
East Windsor	
East Windsor Township	NJ0397
Highstown Borough	NJ0414
Cranbury Township	NJ0437
South Brunswick Township	NJ0441
Plainsboro Township	NJ0344
West Windsor	
West Windsor Township	NJ0530
Roosevelt Borough	NJ0508
Gloucester, NJ	
Clayton Borough	NJ0368
Deptford Township	NJ0267
East Greenwich Township	NJ0460
Glassboro Township	NJ0367
Greenwich Township	NJ0424
Mantua Township	NJ0412
National Park Borough	NJ0423
Paulsboro	NJ0413
Wenonah Borough	NJ0380
West Deptford Township	NJ0379
Westville Borough	NJ0312
Woodbury City	NJ0269
Woodbury Heights Borough	NJ0268
Monmouth, NJ	
Eatontown	
Allenhurst	NJ0470
Atlantic Highlands Borough	NJ0363
Deal Borough	NJ0471
Eatontown Borough	NJ0132
Fair Haven Borough	NJ0435
Hazlet Township	NJ0405
Highlands Borough	NJ0464
Holmdel Township	NJ0487
Little Silver Borough	NJ0206
Loch Arbor Village	NJ0473
Long Branch City	NJ0436
Middletown Township, NJ	NJ0362
Monmouth Beach Borough	NJ0155
Oceanport Borough	NJ0158
Red Bank Borough	NJ0433
Rumson Borough	NJ0469

	Sea Bright Borough	NJ0156
	Shrewsbury Borough	NJ0274
	Shrewsbury Township	NJ0275
	Tinton Falls Borough	NJ0434
	U.S. Fort Monmouth	NJ0472
	West Long Branch Borough	NJ0157
	Freehold	
	Freehold Borough	NJ0474
Northwest, NJ		
	Belvidere Town	NJ0115
	Califon Borough	NJ0555
	Franklin Township	NJ0079
	Glen Gardner Borough	NJ0039
	Hackettstown Town	NJ0009
	Hampton Borough	NJ0040
	High Bridge Borough	NJ0078
	Independence Township	NJ0314
	Lebanon Township	NJ0041
	Liberty Township	NJ0502
	Mansfield Township	NJ0011
	Mount Olive Township	NJ0012
	Oxford Township	NJ0116
	Washington Borough	NJ0043
	Washington Twp. (Morris Co.)	NJ0042
	Washington Twp. (Warren Co.)	NJ0080
	White Township	NJ0240
Ocean, NJ		
	Mantoloking	NJ0049
	Bay Head	NJ0050
	Brick Town	NJ0051
	Point Pleasant	NJ0052
	Point Pleasant Beach	NJ0053
Plainfield, NJ		
	Plainfield	NJ0124
	North Plainfield	NJ0126
	South Plainfield	NJ0130

**COMCAST CABLE COMMUNICATIONS, INC.
COMMUNITY UNIT IDENTIFICATION NUMBERS
BENCHMARK FRANCHISE AREAS**

<u>SYSTEM</u>	<u>FRANCHISE AREA</u>	<u>CUID. No.</u>
FLINT, MI	City of Flint	MI0087
	Town of Flint	MI0290
	City of Flushing	MI0280
	City of Grand Blanc	MI0183
	Village of Holly	MI0384
	Township of Mundy	MI0395
	City of Swartz Creek	MI0396
Grosse Point, MI	City of Grosse Point Farms	MI0425
Indianapolis, IN	Perry	IN0152
	Wayne	IN0153
	Franklin	IN0154
	Washington	IN0155
	Lawrence City	IN0156
	Warren	IN0157
	Decator	IN0201
	Pike	IN0202
	Warren Park Town	IN0266
	Indianapolis City/Marion County	IN0302
	Indianapolis City/Marion County	IN0308
	Brown	IN0375
	Guilford	IN0446
	Lincoln	IN0447
	Center	IN0448
	Marion	IN0556
Clay	IN0622	
Delaware	IN0623	
Fall Creek	IN0624	
Southeast Michigan	Town of Clinton	MI0464
	Town of Macomb	MI0524
	City of Mt. Clemens	MI0909
	City of Sterling Heights	MI0637
	City of Utica	MI0523
City of Warren	MI0465	
Baltimore, MD	Baltimore County	MD0081
Howard, MD	Howard County	MD0077
Rehobeth Beach, DE	City of Milford - Kent County	DE0018
Danbury, CT	Town of Danbury	CT0076
	Town of Bethel	CT0096

	Town of Ridgefield	CT0113
Middletown, CT	City of Middletown	CT0044
	Town of Middlefield	CT0045
	Town of Cromwell	CT0046
	East Hampton	CT0047
	Town of Portland	CT0048
Orange County, CA	City of Buena Park	CA0895
	City of Fullerton	CA0818
	City of Newport Beach	CA0458
	City of Seal Beach	CA0499
Meadowlands, NJ	Borough of Rutherford	NJ0294
	Borough of East Rutherford	NJ0295
	Borough of Carlstadt	NJ0296
	Township of Lyndhurst	NJ0297
	Borough of North Arlington	NJ0298
	Town of Kearney	NJ0299
	Borough of East Newark	NJ0300
	Borough of Wallington	NJ0382
Philadelphia, PA	City of Philadelphia	PA2539
Trenton, NJ	City of Trenton	NJ0478
	Township of Ewing	NJ0479
	Township of Lawrence	NJ0480
	Borough of Pennington	NJ0559
	Borough of Hopewell	NJ0560
Charleston, SC	Town of Sullivan's Island	SC0181
Panama City, FL	City of Callaway	FL0028
Sarasota, FL	Sarasota County	FL0104
Bartow/Sebring, FL	Town of Lake Placid	FL0159
Tallahassee, FL	City of Tallahassee	FL0033
West Palm Beach, FL	City of West Palm Beach	FL0112
Little Rock, AR	City of Cammack Village	AR0272
Florence, AL	City of Florence	AL0109

**COMCAST CABLE COMMUNICATIONS, INC.
NET REFUND LIABILITY
COST OF SERVICE SYSTEMS**

SYSTEM	SUBSCRIBERS*	CURRENT CPS RATE	SETTLEMENT AMOUNT**	SETTLEMENT AMOUNT PER SUBSCRIBER***
Clinton	21,252	\$14.88	\$191,307	\$9.00
Groton	29,066	\$12.87	\$261,647	\$9.00
New Haven	70,882	\$16.33	\$638,068	\$9.00
Burlington	37,035	\$16.61	\$333,383	\$9.00
Central				
East Brunswick	23,852	\$14.54	\$214,710	\$9.00
East Windsor	24,890	\$13.48	\$224,054	\$9.00
West Windsor	<u>4,864</u>	\$14.35	<u>\$43,788</u>	\$9.00
	<u>53,606</u>		<u>\$482,552</u>	\$9.00
Gloucester	35,815	\$14.46	\$322,401	\$9.00
Monmouth	66,316	\$16.06	\$596,965	\$9.00
Northwest	24,099	\$16.51	\$216,935	\$9.00
Ocean	36,147	\$16.20	\$325,389	\$9.00
Plainfield	<u>20,249</u>	\$16.75	<u>\$182,278</u>	\$9.00
Total	394,467		\$3,550,925	

* Subscriber counts are based on approximate number of subscribers on date of complaint. Actual number of Eligible Subscribers may vary monthly.

** Settlement Amount before Interest.

*** Per subscriber settlement before Interest. Actual per subscriber settlement amount will vary with number of Eligible Subscribers and Interest.

**COMCAST CABLE COMMUNICATIONS, INC.
NET REFUND LIABILITY
BENCHMARK SYSTEMS**

EXHIBIT 4

<u>SYSTEM/FRANCHISE AREA</u>	<u>CUID No.</u>	<u>SUBSCRIBERS**</u>	<u>SETTLEMENT AMOUNT***</u>	<u>SETTLEMENT AMOUNT PER SUBSCRIBER****</u>
<u>FLINT</u>				
City of Flint	MI0087	31,893	\$151,692	\$4.76
Town of Flint	MI0290	8,247	\$10,134	\$1.23
City of Flushing	MI0280	2,290	\$8,591	\$3.75
City of Grand Blanc	MI0185	2,306	\$8,669	\$3.76
Village of Holly	MI0384	1,433	\$1,851	\$1.29
Township of Mundy	MI0395	2,199	\$7,295	\$3.32
City of Swartz Creek	MI0396	1,379	\$5,118	\$3.71
City of Grosse Point Farms	MI0425	2,867	\$3,175	\$1.11
Indianapolis - Marion County	See Below	101,984	\$121,900	\$1.20
<u>Southeast Michigan</u>				
Town of Clinton	MI0464	22,183	\$31,549	\$1.42
Town of Macomb	MI0524	5,253	\$11,903	\$2.27
City of Mt. Clemens	MI0909	3,926	\$15,151	\$3.86
City of Sterling Heights	MI0637	27,376	\$136,871	\$5.00
City of Utica	MI0523	1,098	\$4,969	\$4.53
City of Warren	MI0465	33,282	\$131,052	\$3.94
Baltimore	MD0081	172,487	\$457,765	\$2.65
Howard - Howard County	MD0077	48,518	\$276,599	\$5.69
City of Milford - Kent County	DE0018	572	\$3,480	\$6.05
Danbury - City of Danbury	CT0076,0113 CT0096	33,840	\$397,080	\$11.73
Middletown - City of Middletown	CT0044,0045,0046 CT0047,0048	23,232	\$144,208	\$6.21
<u>Orange County</u>				
City of Buena Park	CA0895	10,636	\$48,972	\$4.60
City of Fullerton	CA0818	21,513	\$148,016	\$6.79
City of Newport Beach	CA0458	18,976	\$18,389	\$0.97
City of Seal Beach	CA0499	7,653	\$20,402	\$2.67
Meadowlands	NJ0296,0300,0295 NJ0299,0279,0298 NJ0294,0382	30,616	\$74,752	\$2.44
Philadelphia - City of Phila.	PA2539	158,059	\$496,391	\$3.14
Trenton	NJ0479,0560,0480 NJ0559,0478	39,598	\$56,576	\$1.43
<u>Charleston</u>				
Town of Sullivan's Island	SC0181	549	\$449	\$0.82
<u>Panama City</u>				
City of Callaway	FL0028	4,246	\$18,638	\$4.39
Sarasota - Sarasota County	FL0104	47,945	\$83,261	\$1.74
Town of Lake Placid	FL0159	495	\$1,681	\$3.40
Tallahassee - City of Tallahassee	FL0033	43,332	\$43,516	\$1.00
<u>West Palm Beach</u>				
City of West Palm Beach	FL0112	18,236	\$18,956	\$1.04
Arkansas - City of Cammack Village	AR0272	274	\$1,031	\$3.76
Florence - City of Florence	AL0109	14,218	\$28,877	\$2.03
Total		940,689	\$2,986,919	

* CUID'S Indianapolis - Marion County : IN0152,0153,0154,0155,0156,0157,0201,0202,0266,0302,0308,0375,0446,0447,0448,0556,0622,0623,0624

** Subscriber counts are based on approximate number of subscribers on date of complaint. Actual number of Eligible Subscribers may vary monthly.

*** Settlement Amount before Interest.

**** Per subscriber settlement before Interest. Actual per subscriber settlement amount will vary with number of Eligible Subscribers and Interest.