

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

|                                      |   |                                   |
|--------------------------------------|---|-----------------------------------|
| In the Matter of                     | ) |                                   |
|                                      | ) |                                   |
| Comcast Cable Communications, LLC    | ) |                                   |
|                                      | ) | File No. CSB-A-0741               |
| Orders Setting Basic Equipment Rates | ) | CUID Nos. (see attached Appendix) |
|                                      | ) |                                   |
| Petition for Emergency Stay          | ) |                                   |
|                                      | ) |                                   |
|                                      | ) |                                   |

**ORDER**

**Adopted: April 25, 2005**

**Released: April 26, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

1. On April 8, 2005, Comcast Cable Communications, LLC ("Comcast") filed a Petition for Emergency Stay ("Stay Petition") requesting that the Commission stay local rate orders ("Local Orders") affecting approximately 100 communities, issued on or about March 3, 2005 through April 1, 2005.<sup>1</sup> All of these Local Orders concern the local franchising authorities' ("LFAs") review of Comcast's 2004 national aggregated FCC Form 1205 ("Comcast 1205"), setting the maximum permitted rates that Comcast may charge for equipment used to receive the basic services tier ("BST"). The LFAs filed an opposition to the Petition on April 20, 2005.<sup>2</sup> Comcast previously filed a Petition for Declaratory Ruling concerning the LFAs' review of the Comcast 1205 to which some of the LFAs responded in opposition or with comments.<sup>3</sup>

2. The Commission evaluates petitions for stay under well settled principles. To support a stay, a petitioner must demonstrate: (1) that it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if a stay is granted; and (4) that the public interest favors granting a stay.<sup>4</sup> The likelihood of success on the merits is

<sup>1</sup> See the attached Appendix for a list of the LFAs cited in the Petition.

<sup>2</sup> Upon motion, we granted the LFAs an extension until April 20, 2005 to file their opposition. See *Comcast Cable Communications, LLC*, DA 05-1085, \_\_\_ FCC Rcd \_\_\_ (MB 2005). Comcast also filed a request for expedited consideration of its Petition which was responded to but not opposed. Because we are acting on the Petition in this Order, we find the request to be moot.

<sup>3</sup> The Petition for Declaratory Ruling is designated as FCC file or case no. CSR-6388-R.

<sup>4</sup> See 47 C.F.R. § 1.43; *Applications of Alvin Lou Media, Inc. and KM Communications, Inc. for New AM Broadcast Stations*, 19 FCC Rcd. 806, 812 at n. 44 (2004), citing *Virginia Petroleum Jobbers Ass'n. v. FPC*, 259 F.2d 921 (D.C. Cir. 1958) and *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

an important element in a petitioner's showing. However, the degree to which a probability of success on the merits must be found will vary according to the Commission's assessment of the other factors.<sup>5</sup> When confronted with a case in which other elements strongly favor interim relief, the Commission may exercise its discretion to grant a stay.

3. Based on a review of the pleadings in this matter, we find that a stay of the Local Orders, pending a review and determination of Comcast's appeals on the merits, is in the public interest. The balance of equity of the last three factors cited above weighs heavily in favor of granting a stay. In the absence of a stay, Comcast will be harmed because of its limited ability to recover refunds erroneously issued. Unlike the FCC Form 1240, which is based on a reconciliation of projected and actual costs, the FCC Form 1205 contains no true-up mechanism for incorporating equipment undercharges in subsequent filings, because the annual equipment charges are based on actual cost only. On the other hand, a stay in this matter will cause little or no harm to subscribers in that funds must be escrowed or bonded with interest. The fact that individual subscribers change over time does not increase the potential harm to subscribers because, at any point in time that refunds are calculated and remitted, the current and past subscribers might not be identical.<sup>6</sup> Finally, because of the large number of appeals involved, the lack of specificity in the Local Orders as to the method for calculating refunds, the necessity of consolidating the cases at the commission level, and the efficacy of having a uniform resolution imposed, it is in the public interest to have the Local Orders stayed pending resolution of the appeals. A stay will allow the final decision to be implemented efficiently and uniformly. We find that balancing the interests favors retaining the *status quo* while we resolve the complex issues involved in the appeals.

4. Although Comcast raises several issues in its Petition, we need only to determine the probability of success on a single issue that would require remand in order to find that a stay is warranted. Comcast raises the issue of the LFAs' reduction of its cost allocation factor for the Hourly Service Charge ("HSC"). The cost allocation factor is found on the FCC Form 1205 "Worksheet for Calculating Permitted Equipment and Installation Charges", Step A, Line 4: Customer Equipment and Installation Percentage (attach an explanation).<sup>7</sup> Comcast maintains that, although there may have been some initial confusion in determining the extent of the costs included as the denominator in the allocation factor, it clarified and submitted detailed supporting data to confirm that the denominator was accurate in representing all of the costs that were necessary to be included in the denominator in order to properly calculate the cost allocation factor. The LFAs reduced the cost allocation factor by 2/3 because of the labeling of the data included in the denominator but do not dispute the methodology used by Comcast. Because of the possibility that the LFAs may have misconstrued the information provided by Comcast and, in fact, the data provided does indeed accurately represent the data required by the methodology which was approved, we find the issue has merit and will grant the requested stay until the matter can be more fully reviewed. We caution the parties to include complete explanations of their relative positions in the appeal pleadings.

5. In order to protect the interests of subscribers and ensure that refunds will be paid if Comcast does not prevail on the merits, we grant the stay on condition that Comcast create an escrow account. During the period of the stay, Comcast must deposit into an interest bearing escrow account the total refund amount due under each Local Order as of the date the account is opened and on an ongoing

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<sup>5</sup> See *Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Washington Metropolitan area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843-44 (D.C. Cir. 1977).

<sup>6</sup> See 47 C.F.R. § 76.942 (d) (2), allowing refunds to be paid to the class of current subscribers.

<sup>7</sup> See FCC Form 1205 at 4.

basis must accumulate in the escrow account the difference between the rates ordered by each LFA and the rates charged customers during the pendency of the underlying petition for review of each Local Order. Alternatively, Comcast may elect to post a bond for the benefit of each LFA. The amount of the bond shall be the total refund amount due as of the date the bond is posted plus an estimate of the additional amount that will accumulate on the basis of the difference between the rates ordered by each LFA and the rates charged customers until Comcast's next annual rate adjustment is scheduled to take effect for each LFA, plus interest. The amount of the bond for estimated additional amounts shall be based on Comcast's subscriber counts at the time the bond is posted. The bond shall provide that, if Comcast is unable to fulfill its refund obligation for any reason, then the surety will fulfill that obligation to each of the LFAs on behalf of Comcast's subscribers.

6. Accordingly, IT IS ORDERED that the Petition for Emergency Stay IS GRANTED pending the resolution of Comcast's appeals on the merits. This stay WILL TERMINATE with respect to any of the LFAs for which the operator does not file an appeal of the local rate order within the time provided by the Commission's rules or such additional time as may be authorized.

7. IT IS FURTHER ORDERED that the Request for Expedited Consideration filed by Comcast Cable Communications, LLC, IS DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED that Comcast SHALL PLACE in an interest bearing escrow account the refund amounts due under each of the LFAs' Local Orders at the time the account is opened and SHALL ACCUMULATE in this account on an ongoing basis the difference between the rates ordered by each LFA and the rates charged customers during the pendency of the underlying appeal. Alternatively, Comcast SHALL SECURE this amount by posting a bond for the benefit of each LFA for the total refund amount ordered by the LFA that is due at the time the bond is posted plus an estimate of the additional amount that will accumulate on the basis of the difference between the rates ordered by each LFA and the rates charged customers until Comcast's next annual rate adjustment for each LFA is scheduled to take effect, plus interest for the period covered by this bond at the prevailing U.S. Internal Revenue Service Rate for tax refunds and additional tax payments. Proof of Comcast's compliance with this Order SHALL BE FILED with the Commission within thirty (30) days of the release of this Order.

9. 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

## APPENDIX

| <u>LFA</u>               | <u>CUID</u> | <u>CONSORTIUM</u>                  |
|--------------------------|-------------|------------------------------------|
| Santa Clara, CA          | CA0455      |                                    |
| Adams County, CO         | CO0136      | Greater Metro Telecomm. Consortium |
| Arapahoe County, CO      | CO0493      | Greater Metro Telecomm. Consortium |
|                          | CO0475      | Greater Metro Telecomm. Consortium |
|                          | CO0250      | Greater Metro Telecomm. Consortium |
|                          | CO0478      | Greater Metro Telecomm. Consortium |
|                          | CO0135      | Greater Metro Telecomm. Consortium |
| Arvada, CO               | CO0051      | Greater Metro Telecomm. Consortium |
|                          | CO0473      | Greater Metro Telecomm. Consortium |
| Aurora, CO               | CO0142      | Greater Metro Telecomm. Consortium |
|                          | CO0143      | Greater Metro Telecomm. Consortium |
| Brighton, CO             | CO0151      | Greater Metro Telecomm. Consortium |
| Broomfield, CO           | CO0155      | Greater Metro Telecomm. Consortium |
| Castle Rock, CO          | CO0210      | Greater Metro Telecomm. Consortium |
| Centennial, CO           | CO0517      | Greater Metro Telecomm. Consortium |
| Cherry Hills Village, CO | CO0196      | Greater Metro Telecomm. Consortium |
| Columbine Valley, CO     | CO0253      | Greater Metro Telecomm. Consortium |
| Commerce, CO             | CO0147      | Greater Metro Telecomm. Consortium |
| Denver, CO               | CO0254      | Greater Metro Telecomm. Consortium |
|                          | CO0490      | Greater Metro Telecomm. Consortium |
| Douglas County, CO       | CO0134      | Greater Metro Telecomm. Consortium |
| Edgewater, CO            | CO0225      | Greater Metro Telecomm. Consortium |
| Englewood, CO            | CO0138      | Greater Metro Telecomm. Consortium |
| Erie, CO                 | CO0420      | Greater Metro Telecomm. Consortium |
| Federal Heights, CO      | CO0148      | Greater Metro Telecomm. Consortium |
| Glendale, CO             | CO0346      | Greater Metro Telecomm. Consortium |
| Golden, CO               | CO0161      | Greater Metro Telecomm. Consortium |
| Greenwood Village, CO    | CO0139      | Greater Metro Telecomm. Consortium |
| Indian Hills, CO         | CO0403      | Greater Metro Telecomm. Consortium |
| Jefferson County, CO     | CO0141      | Greater Metro Telecomm. Consortium |
|                          | CO0154      | Greater Metro Telecomm. Consortium |
|                          | CO0495      | Greater Metro Telecomm. Consortium |
|                          | CO0162      | Greater Metro Telecomm. Consortium |
|                          | CO0150      | Greater Metro Telecomm. Consortium |
|                          | CO0455      | Greater Metro Telecomm. Consortium |

|                       |        |   |
|-----------------------|--------|---|
| Lafayette, CO         | CO0280 | Greater Metro Telecomm. Consortium          |
| Lakewood, CO          | CO0077 | Greater Metro Telecomm. Consortium          |
| Littleton, CO         | CO0159 | Greater Metro Telecomm. Consortium          |
| Lone Tree, CO         | CO0501 | Greater Metro Telecomm. Consortium          |
| Louisville, CO        | CO0190 | Greater Metro Telecomm. Consortium          |
| Northglenn, CO        | CO0264 | Greater Metro Telecomm. Consortium          |
| Parker, CO            | CO0205 | Greater Metro Telecomm. Consortium          |
|                       | CO0482 | Greater Metro Telecomm. Consortium          |
| Sheridan, CO          | CO0140 | Greater Metro Telecomm. Consortium          |
| Thornton, CO          | CO0215 | Greater Metro Telecomm. Consortium          |
|                       | CO0479 | Greater Metro Telecomm. Consortium          |
| Westminster, CO       | CO0146 | Greater Metro Telecomm. Consortium          |
|                       | CO0474 | Greater Metro Telecomm. Consortium          |
| Skokie, IL            | IL0657 |   |
| Wheaton, IL           | IL1050 |   |
| Downers Grove, IL     | IL0402 |   |
| Montgomery County, MD | MD0236 |   |
| Coon Rapids, MN       | MN0373 |   |
| Burnsville, MN        | MN0439 | Burnsville / Eagan Telecomm. Commission     |
| Eagan, MN             | MN0440 | Burnsville / Eagan Telecomm. Commission     |
| Blaine, MN            | MN0370 | North Metro Telecomm. Commission            |
| Centerville, MN       | MN0371 | North Metro Telecomm. Commission            |
| Circle Pines, MN      | MN0372 | North Metro Telecomm. Commission            |
| Ham Lake, MN          | MN0374 | North Metro Telecomm. Commission            |
| Lexington, MN         | MN0375 | North Metro Telecomm. Commission            |
| Lino Lakes, MN        | MN0376 | North Metro Telecomm. Commission            |
| Spring Lake Park, MN  | MN0377 | North Metro Telecomm. Commission            |
| Arden Hills, MN       | MN0297 | North Suburban Communications Commission    |
| Falcon Heights, MN    | MN0298 | North Suburban Communications Commission    |
| Lauderdale, MN        | MN0299 | North Suburban Communications Commission    |
| Little Canada, MN     | MN0300 | North Suburban Communications Commission    |
| Mounds View, MN       | MN0301 | North Suburban Communications Commission    |
| New Brighton, MN      | MN0302 | North Suburban Communications Commission    |
| Roseville, MN         | MN0304 | North Suburban Communications Commission    |
| North Oaks, MN        | MN0303 | North Suburban Communications Commission    |
| St Anthony, MN        | MN0305 | North Suburban Communications Commission    |
| Shoreview, MN         | MN0306 | North Suburban Communications Commission    |
| Lake Elmo, MN         | MN0315 | Ramsey / Washington CO Suburban Cable Comm. |
| Maplewood, MN         | MN0317 | Ramsey / Washington CO Suburban Cable Comm. |

|                       |        |  |
|-----------------------|--------|--|
| North St. Paul, MN    | MN0318 | Ramsey / Washington CO Suburban Cable Comm.  |
| Birchwood, MN         | MN0313 | Ramsey / Washington CO Suburban Cable Comm.  |
| Dellwood, MN          | MN0314 | Ramsey / Washington CO Suburban Cable Comm.  |
| Mahtomedi, MN         | MN0316 | Ramsey / Washington CO Suburban Cable Comm.  |
| Vadnais Heights, MN   | MN0320 | Ramsey / Washington CO Suburban Cable Comm.  |
| White Bear Lake, MN   | MN0321 | Ramsey / Washington CO Suburban Cable Comm.  |
| Willernie, MN         | MN0322 | Ramsey / Washington CO Suburban Cable Comm.  |
| Oakdale, MN           | MN0319 | Ramsey / Washington CO Suburban Cable Comm.  |
| Grant, MN             | MN0323 | Ramsey / Washington CO Suburban Cable Comm.  |
| White Bear, MN        | MN0324 | Ramsey / Washington CO Suburban Cable Comm.  |
| Cottage Grove, MN     | MN0396 | South Washington County Telecomm. Commission |
| Newport, MN           | MN0397 | South Washington County Telecomm. Commission |
| St. Paul Park, MN     | MN0401 | South Washington County Telecomm. Commission |
| Woodbury, MN          | MN0395 | South Washington County Telecomm. Commission |
| Grey Cloud, MN        | MN0400 | South Washington County Telecomm. Commission |
| Saint Paul, MN        | MN0424 | South Washington County Telecomm. Commission |
| Albuquerque, NM       | NM0036 |  |
| Mentor, OH            | OH0740 |  |
| Banks, OR             | OR0325 | Metropolitan Area Communications Commission  |
| Beaverton, OR         | OR0283 | Metropolitan Area Communications Commission  |
| Cornelius, OR         | OR0318 | Metropolitan Area Communications Commission  |
| Durham, OR            | OR0326 | Metropolitan Area Communications Commission  |
| Forest Grove, OR      | OR0289 | Metropolitan Area Communications Commission  |
| Gaston, OR            | OR0442 | Metropolitan Area Communications Commission  |
| Hillsboro, OR         | OR0290 | Metropolitan Area Communications Commission  |
| King City, OR         | OR0317 | Metropolitan Area Communications Commission  |
| Lake Oswego, OR       | OR0064 | Metropolitan Area Communications Commission  |
|                       | OR0304 | Metropolitan Area Communications Commission  |
| North Plains, OR      | OR0341 | Metropolitan Area Communications Commission  |
| Rivergrove, OR        | OR0330 | Metropolitan Area Communications Commission  |
| Tigard, OR            | OR0288 | Metropolitan Area Communications Commission  |
| Tualatin, OR          | OR0328 | Metropolitan Area Communications Commission  |
| Washington County, OR | OR0333 | Metropolitan Area Communications Commission  |
|                       | OR0242 | Metropolitan Area Communications Commission  |
| Murfreesboro, TN      | TN0082 |  |
| Arlington County, VA  | VA0108 |  |
| District of Columbia  | DC0002 |  |