

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

In the Matter of )  
)  
Comcast of Minnesota, Inc. )  
Order Setting Basic Service and Equipment Rates )  
Arden Hills MN (MN0297) )  
Falcon Heights MN (MN0298) )  
Lauderdale MN (MN0299) )  
Little Canada MN (MN0300) ) CSB-A-0731  
Mounds View MN (MN0301) )  
New Brighton MN (MN0302) )  
North Oaks MN (MN0303) )  
Roseville MN (MN0304) )  
St. Anthony MN (MN0305) )  
Shoreview MN (MN0306) )  
  
Comcast of Minnesota, Inc. )  
Order Setting Basic Service and Equipment Rates )  
Birchwood MN (MN 0313) )  
Dellwood MN (MN 0314) )  
Grant MN (MN 0323) )  
Lake Elmo MN (MN 0315) )  
Mahtomedi MN (MN 0316) )  
Maplewood MN (MN 0317) )  
North St. Paul MN (MN 0318) ) CSB-A-0732  
Oakdale MN (MN 0319) )  
Vadnais Heights MN (MN 0320) )  
White Bear Lake MN (MN 0321) )  
White Bear Township MN (MN 0324) )  
Willernie MN (MN0322) )  
  
Comcast of Minnesota, Inc. )  
Order Setting Basic Service and Equipment Rates )  
Burnsville MN (MN 0439) )  
Eagan MN (MN 0440) ) CSB-A-0734  
  
Comcast of Minnesota/Wisconsin, Inc. )  
Order Setting Basic Service and Equipment Rates )  
Cottage Grove MN (MN0396) )  
Grey Cloud Island Township MN (MN 0400) )  
Newport MN (MN 0397) ) CSB-A-0735  
St. Paul Park MN (MN0401) )  
Woodbury MN (MN 0395) )

Comcast of Minnesota, Inc. )  
 Order Setting Basic Service and Equipment Rates ) CSB-A-0736  
 Coon Rapids MN (MN0373) )

## ORDER

**Adopted: December 19, 2005**

**Released: December 21, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

### I. INTRODUCTION

1. In this Order, we decide five appeals filed by two Comcast companies against rate orders issued by five franchising authorities that set rates for the Basic Service Tier (“BST”) of cable service in 30 communities in Minnesota. Each appeal consists of an Appeal by one of the Comcast companies,<sup>1</sup> an Opposition by the franchising authority,<sup>2</sup> and a Reply by Comcast.<sup>3</sup> All the appeals present the same material facts and issues. Accordingly, in the interests of administrative efficiency, we are deciding all the appeals in this one Order.<sup>4</sup>

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<sup>1</sup> Appeal of Local Rate Order (“Arden Hills Appeal”), filed Feb. 2, 2005 by Comcast of Minnesota, Inc., in CSB-A-0731; Appeal of Local Rate Order (“Birchwood Appeal”), filed Feb. 15, 2005, by Comcast of Minnesota, Inc., in CSB-A-0732; Appeal of Local Rate Order (“Burnsville Appeal”), filed Feb. 25, 2005 by Comcast of Minnesota, Inc., in CSB-A-0734; Appeal of Local Rate Order (“Cottage Grove Appeal”), filed Feb. 28, 2005, by Comcast of Minnesota/Wisconsin, Inc., in CSB-A-0735; Appeal of Local Rate Order (“Coon Rapids Appeal”), filed March 3, 2005 by Comcast of Minnesota, Inc., in CSB-A-0736. The term “Comcast” will be used to refer to both Comcast of Minnesota, Inc., and Comcast of Minnesota/Wisconsin, Inc.

<sup>2</sup> Opposition of the North Suburban Commun. Comm’n to Appeal of Local Rate Order (“Arden Hills Opposition”), filed March 2, 2005; Opposition of the Ramsey/Washington Counties Suburban Cable Commun. Comm’n II to Appeal of Local Rate Order, filed March 2, 2005 (“Birchwood Opposition”); Opposition of the Burnsville/Eagan Telecommun. Comm’n to Appeal of Local Rate Order (“Burnsville Opposition”), filed March 11, 2005; Opposition of the South Washington County Telecommun. Comm’n to Appeal of Local Rate Order (“Cottage Grove Opposition”), filed March 15, 2005; Opposition of the City of Coon Rapids, Minnesota to Appeal of Local Rate Order, filed March 18, 2005.

<sup>3</sup> Reply to Opposition to Appeal of Local Rate Order, filed March 11, 2005, by Comcast of Minnesota, Inc.; Reply to Opposition to Appeal of Local Rate Order, filed March 11, 2005, by Comcast of Minnesota, Inc.; Reply to Opposition to Appeal of Local Rate Order (“Burnsville Reply”), filed March 11, 2005, by Comcast of Minnesota, Inc.; Reply to Opposition to Appeal of Local Rate Order, filed March 23, 2005, by Comcast of Minnesota/Wisconsin, Inc.; Reply to Opposition to Appeal of Local Rate Order, filed March 23, 2005, by Comcast of Minnesota, Inc.

<sup>4</sup> *Comcast Cablevision of Dallas, Inc.*, 19 FCC Rcd 10628, 10630 ¶ 2, *reconsidered on other grounds*, 19 FCC Rcd 22687 (2004); *Frontiervision Operating Partners*, 18 FCC Rcd 20416, 20417 (2003) ¶ 3, *application for review denied on other grounds*, 19 FCC Rcd 23096 (2004), *appeal pending sub nom. City of Winchester v. FCC*, Case No. 05-3083 (6<sup>th</sup> Cir., filed Jan. 13, 2005).

2. The appeals raise two issues about what costs cable operators may incorporate in our Form 1240 -- the Form on which the cable operator submits data to the franchising authority annually and based on which the franchising authority reviews proposed rates for the cable operator's BST. In brief, we conclude that the franchising authorities erred when they directed Comcast to incorporate certain franchise fees on Form 1240. We conclude that the franchising authorities were correct, however, when they directed Comcast to separately incorporate its federal regulatory fees on the Form.

## II. BACKGROUND

3. The Communications Act of 1934, as amended ("the Act")<sup>5</sup> provides that, where effective competition is absent, rates for the BST and associated equipment are subject to regulation by franchising authorities.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

4. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.<sup>9</sup> In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a rational basis for that decision exists.<sup>10</sup> The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules. 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.

## III. DISCUSSION

### A. Franchise Fees

5. Section 622 of the Act authorizes franchising authorities, in return for permitting a cable operator to occupy public rights of way, to charge the cable operator a franchise fee of no more than five

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<sup>5</sup> 47 U.S.C. §§ 151 *et seq.*

<sup>6</sup> 47 U.S.C. § 543(a)(2).

<sup>7</sup> 47 U.S.C. § 543(b)(1); 47 C.F.R. § 76.922.

<sup>8</sup> 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) ¶ 12.

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

<sup>10</sup> *Harron Commun. Corp.*, 15 FCC Rcd 7901 (2000) ¶ 2; *Implementation of Sections of the Cable Television Consumer Protection & Competition Act*, 8 FCC Rcd 5631 (1993), 9 FCC Rcd 4316, 4346 (1994) ¶ 81.

percent of its gross revenues.<sup>11</sup> The cable operator may seek recovery of the fee entirely from subscribers to cable service even though the recovery may be based, in part, on the cable operator's revenues from advertising and home shopping commissions (collectively, "non-subscriber revenues").<sup>12</sup>

6. In preparation for the rate orders here under review, the franchising authorities retained a consultant who found what it thought were errors in how Comcast recovered from its subscribers the parts of its franchise fees that were attributable to non-subscriber revenues ("non-subscriber fees").<sup>13</sup> The consultant opined that non-subscriber fees "are not *subscriber* franchise fees and therefore can be afforded franchise-related cost treatment" on Line 707 ("Franchise Related Costs for Period") of Worksheet 7 of Form 1240.<sup>14</sup> The rate orders adopted the consultant's recommendation,<sup>15</sup> finding that it would make for stability, uniformity, verifiability, and soundness.<sup>16</sup>

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<sup>11</sup> 47 U.S.C. § 542 (b).

<sup>12</sup> *City of Pasadena, California*, 18 FCC Rcd 18192 ¶ 3, 18198 ¶ 15 (2001), *petition for review denied*, *Texas Coalition of Cities for Utility Issues v. FCC*, 324 F.3d 802 (5<sup>th</sup> Cir. 2003).

<sup>13</sup> Resolution No. 2005-01a, Order Regarding the Maximum Permitted Basic Programming Service Rate Set Forth in the Federal Communications Commission Form 1240 Filed by Comcast of Minnesota, Inc. on or About March 1, 2004 ("Arden Hills *et al.* Local Rate Order"), adopted Jan. 6, 2005, by the North Suburban Commun. Comm'n, ¶¶ 6-7 at 3; Resolution No. 2005-01-13-B, Order Regarding the Maximum Permitted Basic Programming Service Rates Set Forth in the Federal Communications Commission Forms 1240 Filed by Comcast of Minnesota, Inc. on or About March 1, 2004 ("Birchwood *et al.* Rate Order"), adopted Jan. 13, 2005, ¶¶ 5-6 at 3; Resolution No. 2005-01, Order Regarding the Maximum Permitted Basic Programming Service Rates Set Forth in the Federal Communications Commission Forms 1240 Filed by Comcast of Minnesota, Inc. on or About March 1, 2004 ("Burnsville *et al.* Local Rate Order"), adopted Jan. 26, 2005, by the Burnsville/Eagan Telecommun. Comm'n, ¶¶ 6-7 at 3-4; Resolution No. 1.27.05, Order Regarding the Maximum Permitted Basic Programming Service Rate Set Forth in the Federal Communications Commission Form 1240 Filed by Comcast of Minnesota/Wisconsin, Inc. on or About March 1, 2004 ("Cottage Grove *et al.* Local Rate Order"), adopted Jan. 27, 2005, by the South Washington County Telecommun. Comm'n, ¶¶ 6-7 at 3; Resolution No. 05-24, Order Regarding the Maximum Permitted Basic Programming Service Rate Set Forth in the Federal Communications Commission Form 1240 Filed by Comcast of Minnesota, Inc. on or About March 1, 2004 ("Coon Rapids Local Rate Order"), adopted Feb. 1, 2005, by the City of Coon Rapids, ¶¶ 6-7 at 3.

<sup>14</sup> Arden Hills Appeal, Attachment B (Front Range Consulting, Inc., *Final Report to Bradley & Guzzetta, LLC Regarding the Pass-Through of Non-Subscriber-Based Franchise Fees by Comcast of Minnesota, Inc./Comcast of Minnesota/Wisconsin, Inc./Comcast Cable Communications, Inc.* ("Consultant's Final Report"), which is an attachment to Letter from Front Range Consulting, Inc., to Stephen J. Guzzetta, Esquire, Bradley & Guzzetta, LLC, dated Sept, 22, 2004) at 12 (italics in original). More precisely, the consultant contemplates incorporating only the portion of the non-subscriber fees that reflects the "ratio of the [cable operator's] Basic Service video tier revenues to the total video service tier subscriber revenues." *Instructions for completing Supplemental Worksheet 7 – Line 707 – Franchise Related Costs*, which is the second attachment to the *Consultant's Final Report*.

<sup>15</sup> Arden Hills *et al.* Local Rate Order, Ordering Clause #3 at 5; Birchwood *et al.* Rate Order, Ordering Clause #4 at 4-5; Burnsville *et al.* Local Rate Order, Ordering Clause #4 at 5; Cottage Grove *et al.* Local Rate Order, Ordering Clause #3 at 5; Coon Rapids Local Rate Order, Ordering Clause #3 at 5.

<sup>16</sup> Arden Hills *et al.* Local Rate Order, ¶¶ 8-10 at 3-4; Birchwood *et al.* Rate Order, ¶¶ 7-9 at 3-4; Burnsville *et al.* Local Rate Order, ¶¶ 8-10 at 4; Cottage Grove *et al.* Local Rate Order ¶¶ 8-10 at 3-4; Coon Rapids Local Rate Order, ¶¶ 8-10 at 3-4.

7. Comcast appeals from this decision, arguing that non-subscriber fees may not be included on Form 1240 – that, in fact, no part of franchise fees may be included on Form 1240.<sup>17</sup> Comcast also argues that including them there, even if it were permissible, would not achieve the stability and other good effects that the franchising authorities anticipate.<sup>18</sup> Comcast emphasizes that it is not trying to bar inquiry into how it recovers the franchise fees it pays. Its only challenge to the rate orders is their moving that inquiry into Form 1240.<sup>19</sup>

8. The franchising authorities claim non-subscriber fees need to be included in Comcast’s Form 1240 because the company made errors in calculating them.<sup>20</sup> Therefore, the franchising authorities say, their rate orders adopted their own “reasonable, simple and verifiable” method, which is based on the Commission’s standards and procedures and uses Form 1240.<sup>21</sup>

9. After reviewing all the parties’ contentions, we conclude that including non-subscriber fees in Form 1240 is erroneous. First, it contradicts the plain commands of the Form and a recent Commission decision. Page 2 of the Instructions for Form 1240 states that

“The Commission’s rules recognize seven categories of external costs: retransmission consent fees, copyright fees, programming costs, certain cable specific taxes, franchise-related costs, franchise fees and Commission regulatory fees. You may adjust your maximum permitted rate for changes in these categories of costs *except for franchise fees, which are not included in your permitted rates but rather are simply added to them.*”<sup>22</sup>

Page 5 of the Instructions lists “the six external costs which operators are allowed to pass through directly to subscribers” and conspicuously omits franchise fees.<sup>23</sup> No Instruction, Worksheet, or Line in Form 1240 calls for franchise fees to be incorporated into the Form 1240 calculation in part. On the contrary, page 25 of the Instructions includes an entry titled “Exclusion of Franchise Fees,” which provides “Franchise fees have been excluded from this analysis . . .”<sup>24</sup> It is clear that franchise fees, including the part of them that is attributable to non-subscriber revenues, are not to be stated on Form 1240.

10. The Instruction indented above, by listing “franchise-related costs” and “franchise fees” separately, makes clear that they are distinct categories. Likewise, the Instructions for Line 707, which is

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<sup>17</sup> Birchwood Appeal at 2.

<sup>18</sup> Cottage Grove Appeal at 7-10.

<sup>19</sup> Coon Rapids Appeal at 2-3.

<sup>20</sup> Arden Hills Opposition at 4-5.

<sup>21</sup> Birchwood Opposition at 4.

<sup>22</sup> *Instructions for FCC Form 1240, Annual Updating of Maximum Permitted Rates for Regulated Cable Services, “Annual Update Form”* (“Form 1240 Instructions”), available at <http://www.fcc.gov/formpage.html>, at 2 (italics added).

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 25.

for “Franchise Related Costs,” state “Do not include franchise fees.”<sup>25</sup> These show that, contrary to the opinion of the franchising authorities’ consultant, franchise fees are not a subset of the franchise-related costs to be stated on Line 707 of Form 1240.

11. Second, around the time these appeals began, we decided *Charter Communications Entertainment I, LLC*, an appeal from a franchising authority’s decision to require its cable operator to include non-subscriber fees in its FCC Form 1240 calculations.<sup>26</sup> We overturned the authority’s decision and granted the appeal, stating that “the Commission has consistently excluded franchise fee calculations from the maximum permitted rate calculation on the FCC Form 1240” and “the Commission [has a] long-standing practice of excluding franchise fees from FCC Form 1240.”<sup>27</sup>

12. In these appeals, the franchising authorities seek to distinguish *Charter* by pointing out that in that case the cable operator was not yet charging its subscribers for non-subscriber fees.<sup>28</sup> Therefore, the cable operator in *Charter* had not yet committed the errors in calculating those fees that the franchising authorities found Comcast had committed here. In the present cases, however, the franchising authorities continue, Comcast has calculated those fees inaccurately and is charging them to its subscribers. The best way to make the necessary corrections, in the franchising authorities’ opinion, is by following “the FCC’s existing, and well-established rate regulation standards and procedures,” namely subjecting them to the review that is imposed on costs that are incorporated in Form 1240.<sup>29</sup>

13. We reject the franchising authorities’ distinction. *Charter*’s outcome would have been no different if the cable operator there had already been charging its subscribers for non-subscriber fees. Form 1240 has finite purposes, and the recovery of franchise fees is not one of them.<sup>30</sup> Indeed, as noted in *Charter*, adding the franchising authorities’ new calculations to Form 1240 would only complicate its application. Doing so

“would require additional calculations to correct for the inclusion of non-subscriber revenue-based franchise fees as external costs in the maximum permitted rate. The maximum permitted rate is the basis for setting rates used to generate subscriber revenues upon which the subscriber revenue-based franchise fees are calculated. Failure to remove

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<sup>25</sup> *Id.* at 42.

<sup>26</sup> *Charter Commun. Entertainment I, LLC* (“*Charter*”), 20 FCC Rcd 3503 (2005).

<sup>27</sup> *Id.*, 20 FCC Rcd at 3504 ¶ 5.

<sup>28</sup> Appeal of Local Rate Order, File No. CSB-A-0720, filed by Charter Commun. Entertainment I, LLC, Aug. 23, 2004, Attachment A, *Resolution Number 100 of the Board of Aldermen of the City of St. Louis, Missouri, Ordering a 2004 Rate for Cable Cards Pursuant to an Abbreviated FCC Form 1205, an Accounting of Charges for Unreturned Equipment[, and] Methodology for Calculating Certain External Costs*, at 2 § E (adopted July 9, 2004) (requiring Charter “to use . . . Form 1240 . . . if and when . . . Charter should elect recovery from cable subscribers of costs of franchise fees on non-subscriber revenues . . .”).

<sup>29</sup> Burnsville Opposition at 4.

<sup>30</sup> See Instructions quoted *supra* ¶ 9.

the additional franchise fees from this rate could result in excess subscriber revenue-based franchise fees being calculated and passed through to subscribers.”<sup>31</sup>

14. In addition, Comcast adds that the franchising authorities would add to Form 1240 only a small part of non-subscriber fees, namely that which is attributable to Basic Service.<sup>32</sup> Because basic service revenues are only a small proportion of total cable service revenues, any error thus revealed and corrected would be only a small proportion of any harm done to subscribers.<sup>33</sup> Also, incorporating such fees in Form 1240 would ensnare them in the relatively complicated process by which the cable operator prepares the Form and the franchising authority reviews it. This would slow the passing through of any change in franchise fees to subscribers’ bills, which is supposed to occur promptly.<sup>34</sup> On the whole, we find that incorporating franchise fees in Form 1240 as required by the franchising authorities would significantly complicate the rate-setting and fee-recovering process and would not produce any greater benefit for subscribers.

15. Finally, including franchise fee calculations in Form 1240 would be inconsistent with an important policy. The primary purpose of Form 1240 is to develop the rate for the BST. Section 622(a)(1) of the Act, however, permits cable operators to state franchise fees in their bills on a line separate from that for the BST.<sup>35</sup> This itemization on bills “is intended to inform subscribers that local elected officials are imposing franchise fees so that there will be a measure of political accountability for fees and fee increases.”<sup>36</sup> It “permit[s] subscribers to be fully apprised of the effect of the enumerated governmentally imposed costs on their bills.”<sup>37</sup> We do not wish to undermine, or complicate the execution of, the policy that favors informing subscribers of how much they are paying for the cable operator’s service and how much they are paying to the franchising authority for the fees it charges the cable operator. For all the foregoing reasons, we grant Comcast’s appeal from the part of the rate orders that directed Comcast to incorporate certain franchise fees on Form 1240.

16. One group of franchising authorities asks that, if we conclude that nonsubscriber fees should not be incorporated in Form 1240, we give guidance on the correct method for calculating them.<sup>38</sup> For example, among the issues that arose in the litigations below were whether it was proper for Comcast to project its payments of non-subscriber fees for 2004 using certain actual data from nine months of 2003.<sup>39</sup>

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<sup>31</sup> *Charter*, 20 FCC Rcd at 3504-05 ¶ 5; *see also* Arden Hills Appeal at 8-9.

<sup>32</sup> *See* note 14 *supra*.

<sup>33</sup> Arden Hills Appeal at 7-8.

<sup>34</sup> *See* 47 C.F.R. § 76.933(e), Arden Hills Appeal at 8.

<sup>35</sup> 47 U.S.C. § 542(c)(1); 47 C.F.R. § 76.985(a)(1).

<sup>36</sup> *Pasadena*, 18 FCC Rcd at 18201 ¶ 23.

<sup>37</sup> *Id.* at 18195 ¶ 7.

<sup>38</sup> Cottage Grove Opposition at 6.

<sup>39</sup> *See, e.g.*, Cottage Grove Appeal, Attachment A (South Washington County Telecommun. Comm’n, Resolution No. 1.27.05, Order Regarding the Maximum Permitted Basic Programming Service Rate Set Forth in the Federal Communications Commission Form 1240 Filed by Comcast of Minnesota/Wisconsin, Inc. on or about March 1, 2004) at 3 ¶ 7; *Consultant’s Final Report, supra* note 14, at 3, 5; *id.*, attached Letter from John F. Gibbs, (continued....)

Another issue below was whether Comcast, in calculating its franchise fee based on its gross revenues, should exclude from gross revenues what subscribers pay towards the Commission's regulatory fees.<sup>40</sup>

17. Comcast did not raise these issues in these appeals, claiming error only in the franchising authorities' mandate that Comcast incorporate non-subscriber fees in future Form 1240 filings.<sup>41</sup> Also, we do not usually provide advisory opinions,<sup>42</sup> especially on issues that the parties have not briefed. Accordingly, we limit our decision on this issue in this case to concluding that the franchising authorities erred when they ordered Comcast to include the recovery of franchise fees attributable to non-subscriber revenues in Form 1240.

### B. Commission Regulatory Fees

18. Cable operators pay the Commission certain fees to maintain its operations.<sup>43</sup> Form 1240's Worksheet 7, at line 708, calls for the cable operator to state "Commission Regulatory Fees For Period."<sup>44</sup> As made clear in paragraph 9 above, the Instructions for Form 1240 identify seven categories of external costs, including Commission regulatory fees, and provide further that an operator "may" adjust its maximum permitted rate for changes in these costs. More specifically, the Instruction for Line 708 directs the operator to "Enter the total Commission regulatory fees for the period"<sup>45</sup> on Line 708.

19. Four of the franchising authorities noted that Comcast, in its Form 1240, did not include the fees it paid the Commission on Line 708. Comcast had chosen to "separately pass through the regulatory fees as a pro-rated figure on each subscriber's monthly bill."<sup>46</sup> The four franchising authorities ordered Comcast to treat those fees as an external cost and to include them in Worksheet 7 for Form 1240.<sup>47</sup>

20. Comcast appeals, claiming that it has the option to treat Commission regulatory fees as an external cost or not, and to include them in, or omit them from, its Form 1240. It argues that this option is

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Comcast Cable Communications, Inc., to Steven J. Guzzetta, Creighton, Bradley & Guzzetta ("*Gibbs Letter*"), dated May 5, 2004, at 1.

<sup>40</sup> *Consultant's Final Report*, *supra* note 14, at 7-8; *Gibbs Letter*, *supra* note 39, at 2. Concerning Commission regulatory fees, *see infra* ¶¶ 18-22.

<sup>41</sup> *See, e.g.*, Cottage Grove Appeal at 3 n.4.

<sup>42</sup> *Time Warner Cable*, 13 FCC Rcd 13795, 13796 (1998) ¶ 3 n.9.

<sup>43</sup> 47 U.S.C. § 159.

<sup>44</sup> *See also* 47 C.F.R. § 76.922 (e)(2)(ii)(A), 1 (vi).

<sup>45</sup> Form 1240 Instructions, *supra* note 22, at 42.

<sup>46</sup> Arden Hills Appeal at 10.

<sup>47</sup> Arden Hills *et al.* Local Rate Order, Ordering Clause #4 at 5; Burnsville *et al.* Local Rate Order, Ordering Clause #5 at 5; Cottage Grove *et al.* Local Rate Order, Ordering Clause #4 at 5; Coon Rapids Local Rate Order, Ordering Clause #4 at 5.



created by the permissive word “may” in the Instruction quoted in paragraph 9 above<sup>48</sup> and by the Commission’s *Rate Regulation Fourth Order on Reconsideration*.<sup>49</sup> It also claims that its practice “has long been followed by numerous cable operators across the country.”<sup>50</sup>

21. We disagree with Comcast’s interpretation of our regulations. First, the word “may” in the Instructions for Form 1240 merely permits cable operators to refrain from passing cost increases on to their subscribers. The word “may” is not intended to allow a cable operator to omit from Form 1240 its Commission regulatory fees or the host of other external costs covered by the same sentence in our Instructions -- retransmission consent fees, copyright fees, programming costs, certain cable specific taxes, and franchise-related costs.<sup>51</sup>

22. Second, the sentences from the *Rate Regulation Fourth Order on Reconsideration* that Comcast relies on do not address the omission of Commission regulatory fees from Form 1240. Those sentences address the billing of subscribers pursuant to the original quarterly filing methodology.<sup>52</sup> The *Rate Regulation Fourth Order on Reconsideration* preceded adoption of the Form 1240 annual filing methodology, which is the methodology Comcast uses in the Minnesota communities here. The annual filing methodology, adopted in our *Rate Regulation Thirteenth Order on Reconsideration*, permits an operator to adjust its rates to reflect projected costs that are reasonably certain and reasonably quantifiable.<sup>53</sup> Cable operators who use the annual filing methodology should treat changes in Commission regulatory fees as reasonably certain and reasonably quantifiable and should project those changes through the Form 1240 computations.<sup>54</sup> This decision applies to all external costs other than franchise fees and is implemented in Worksheet 7 of our Form 1240, with which the four franchising authorities directed Comcast to comply. The franchising authorities acted reasonably. We deny Comcast’s appeal on this issue.

#### IV. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED** that the Appeals filed by Comcast of Minnesota, Inc., in CSB-A-0731, CSB-A-0732, CSB-A-0734, and CSB-A-0736, and by Comcast of Minnesota/Wisconsin,

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<sup>48</sup> Coon Rapids Appeal at 11.

<sup>49</sup> Cottage Grove Appeal at 11-12, citing and quoting *Implementation of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation* (“*Rate Regulation Fourth Order on Reconsideration*”), 9 FCC Rcd 5795, 5798 (1994) ¶ 14; Burnsville Reply at 3.

<sup>50</sup> Arden Hills Appeal at 10.

<sup>51</sup> Arden Hills Opposition at 6.

<sup>52</sup> Burnsville Opposition at 5.

<sup>53</sup> *Implementation of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation* (“*Rate Regulation Thirteenth Order on Reconsideration*”), 11 FCC Rcd 388, 394 (1995) ¶ 13, 417 ¶ 68, 418 ¶ 72, 419 ¶ 74.

<sup>54</sup> *Id.*, 11 FCC Rcd at 414-15 ¶ 58, note 206: “Operators that elect the new annual rate filing methodology incorporate changes in Commission regulatory fees into their annual filings.”

Inc., in CSB-A-0735 **ARE GRANTED IN PART** and **DENIED IN PART** and **ARE REMANDED** for further consideration consistent with this Order.

24. 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