

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

In the Matter of
New Jersey Division of Rate Counsel
Appeal of Local Rate Order of the New Jersey
Board of Public Utilities
File No. CSB-A-0748

ORDER

Adopted: May 3, 2016

Released: May 4, 2016

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we deny an appeal of a local rate order and find that the local franchising authority ("LFA") acted reasonably when it approved equipment rates in New Jersey. The New Jersey Division of Rate Counsel ("Rate Counsel") filed a timely appeal with the Commission of a New Jersey Board of Public Utilities' ("Utilities Board") order ("Local Rate Order") approving cable equipment rates for multiple communities in the State of New Jersey. The Utilities Board and the regulated entity, Comcast Cable Communications, LLC ("Comcast") filed oppositions to the appeal. Rate Counsel filed a Reply to the oppositions.

2. The Utilities Board is the LFA for cable rate regulation in New Jersey. Orders issued by an LFA may be appealed to the Commission. In resolving an appeal of a local rate order, the Commission will not conduct a de novo review of the rate filings, but instead will sustain the LFA's decision if it has a reasonable basis. The Commission will reverse an LFA's decision if it determines that the LFA acted

1 The Utilities Board's Local Rate Order, BPU Docket No. CR10030162, is dated February 10, 2011. Under the Commission's rules, any participant at the local franchising authority ("LFA") level in a ratemaking proceeding may file an appeal of the LFA's decision with the Commission. 47 C.F.R. §76.944 (b). The New Jersey Division of Rate Counsel is an independent state agency representing the interests of consumers. Rate Counsel is eligible to file its appeal because it participated in the proceeding before the Utilities Board.

2 In response to a request by Media Bureau staff, Comcast supplemented the record with subscriber rate cards from several New Jersey communities. Subsequent to the closing of the pleading cycle, on June 28, 2012, Rate Counsel filed a "Supplement to Rate Counsel's Appeal" incorporating references to the Commission's recently released Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Fifth Report and Order, FCC 12-59 (June 12, 2012) ("Fifth Report and Order"). Because the Fifth Report and Order does not affect the outcome of this appeal, we decline to re-open the pleading cycle to allow the additional filing.

3 47 U.S.C. § 543 (b) (5) (B); 47 C.F.R. § 76.944 (b).

4 Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, 8 FCC Rcd 5631, 5731 ¶ 149 (1993) ("Rate Order"); 9 FCC Rcd 4316, 4346 ¶ 81 (1994) ("Third Reconsideration").

unreasonably in applying the Commission's rules.<sup>5</sup>

3. Cable operators annually compute cost-based equipment and installation rates using FCC Form 1205.<sup>6</sup> These equipment charges are subject to regulation by the LFA. Under Section 76.923(a) of the Commission's rules, all equipment used to receive the basic service tier ("BST") is subject to rate regulation, regardless of whether such equipment is also used to receive other tiers of regulated or unregulated programming services.<sup>7</sup> The BST is defined by statute as "any service tier which includes the retransmission of local television broadcast signals."<sup>8</sup> The Commission further requires that the BST "shall, at a minimum, include all signals of domestic television broadcast stations provided to any subscriber . . . , any public, educational, and governmental programming required by the franchise to be carried on the basic tier; and any additional video programming signals . . . added to the basic tier by the cable operator."<sup>9</sup>

## II. DISCUSSION

### A. Introduction

4. In the Local Rate Order, the Utilities Board adopted a Stipulation of Settlement resolving issues related to Comcast's FCC Form 1205 and its equipment rates. Specifically, the Utilities Board approved a \$0.50 monthly fee for a digital adapter ("DTA") to be charged to customers with analog televisions who subscribe to the digital BST and who require adapters to be able to view digital signals on their analog television sets. Each analog television requires its own DTA to view digital signals. Comcast provides the first three DTAs needed by subscribers free of charge, but subscribers must pay a \$0.50 fee for any additional televisions. In its Appeal, Rate Counsel argues that the Utilities Board failed to properly comply with the requirements of the Commission's *Viewability Order* when it approved the \$0.50 monthly DTA fee for the 4th and additional analog television sets.<sup>10</sup>

5. In its Appeal, the Rate Counsel also challenges the \$0.50 BST DTA rate and a \$1.99 cable programming services tier ("CPST") digital outlet fee that includes a \$0.50 DTA charge as inconsistent with the Commission's equipment rate rules.<sup>11</sup> Finally, Rate Counsel argues that the effective approval date of the equipment rates violates the Commission's FCC Form 1205 process rules and notice provisions found in Sections 76.923, 76.933, 76.1603 and 76.1622.<sup>12</sup> We address each of these issues

---

<sup>5</sup> *Rate Order*, 9 FCC Rcd at 5731. If the Commission reverses a franchising authority's decision, it will not substitute its own decision, but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal. *Id.* at 5732.

<sup>6</sup> See FCC Form 1205, *Determining Regulated Equipment and Installation Costs* (June 1996).

<sup>7</sup> 47 C.F.R. § 76.923 (a). The BST includes, at a minimum, the broadcast signals distributed by the cable operator (except superstations), along with any public, educational, or government access channels required by the local franchising authority. 47 U.S.C. § 543 (b) (7); 47 C.F.R. § 76.901 (a). Local franchising authorities have jurisdiction to regulate the cable operator's rates for the installation and lease of equipment used by subscribers to receive the BST. 47 U.S.C. § 543 (a) (2) (A), (b) (1), (b) (3) (A). The Commission has interpreted the scope of this authority to include all equipment in a subscriber's home, provided and maintained by the cable operator that is used to receive the BST, regardless of whether such equipment is additionally used for other services. 47 C.F.R. § 76.923(a) (1). The covered equipment includes converter boxes, remote control units, and inside wiring.

<sup>8</sup> See 47 U.S.C. § 522 (3).

<sup>9</sup> See 47 C.F.R. § 76.901 (a).

<sup>10</sup> *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Third Report and Order and Third Further Notice of Proposed Rulemaking*, 22 FCC Rcd 21064 (2007) ("*Viewability Order*").

<sup>11</sup> 47 C.F.R. §§ 76.923 and 76.924

<sup>12</sup> 47 C.F.R. §§ 76.923, 76.933, 76.1603 and 76.1622.

below.

#### B. Compliance with *Viewability Order*

6. We find that the LFA was reasonable in allowing charges for DTA converters. In its appeal Rate Counsel argues that the Commission's *Viewability Order* prohibits cable operators that have begun their transition into digital signal transmission from charging cable subscribers that have analog television sets for equipment, such as DTAs, to view channels on such systems. Rate Counsel misconstrues the Commission's *Viewability Order*.<sup>13</sup>

7. In 2007, the Commission adopted rules to ensure that cable subscribers, including those with analog televisions, would continue to be able to view broadcast stations after the transition to digital broadcast television had begun.<sup>14</sup> The *Viewability Order* required cable operators transitioning to digital signal transmission to continue to provide must-carry broadcast signals in analog format unless the cable system had become an all-digital system.<sup>15</sup> In other words, if a cable operator continues to transmit any signals in analog to subscribers, then it must continue to transmit must-carry channels in analog to those subscribers. This rule prevents a subscriber to an analog BST from losing its local broadcast channels after the digital transition.

8. A DTA is not needed to view an analog signal on an analog television set. But once a cable system begins transmitting its signal in digital format, a cable subscriber with an analog television requires some type of converter. The purpose of a DTA is to convert a digital signal to an analog signal so that it can be viewed on an analog television. The DTA is a simple converter that performs this digital-to-analog conversion. The Commission addressed the question of compensation for the cable operator for providing this equipment directly in the *Viewability Order*, where it stated: "nothing in this order precludes [cable operators] from recovering the costs of those [converter] boxes from subscribers."<sup>16</sup>

9. The *Viewability Order* does not forbid a charge for DTA equipment necessary for subscribers with analog television sets to receive a digital cable signal. Comcast may charge subscribers with analog television sets a reasonable fee for the use of the DTAs necessary to view its digital signals. Therefore, we find the Utilities Board's application of the *Viewability Order* to be reasonable and deny this part of Rate Counsel's appeal.

#### C. Compliance with Commission's Equipment Rate Rules

10. We find that the LFA was reasonable in interpreting our equipment rate rules. In its appeal,

---

<sup>13</sup> The digital television transition required all full-power television broadcast stations to switch from an analog to a digital format. Digital signal transmission is an advanced technology that offers better picture and sound quality than analog transmission. Cable companies were not required to make this change. A cable company may offer cable channels in an analog tier and others in a digital tier, or it may have transitioned to all-digital service where all of its channels are transmitted using digital technology. All-digital systems are defined as systems that do not carry analog signals or provide analog service. *Viewability Order*, 22 FCC Rcd at 21072, n. 46. The decision to carry channels in analog, analog and digital (sometimes referred to as a "hybrid" system), or solely digital is left to the cable company's discretion. There is no government requirement for the way cable companies transmit their signals. See <http://www.fcc.gov/guides/dtv-transition-did-not-require-cable-systems-switch-digital> for more information.

<sup>14</sup> *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Third Report and Order and Third Further Notice of Proposed Rulemaking*, 22 FCC Rcd 21064, (2007) ("*Viewability Order*").

<sup>15</sup> The term "must-carry" refers to a cable operator's obligation to carry local broadcast television signals on its system. See 47 U.S.C. §534; 47 C.F.R. §§76.51-76.70. An all-digital system was not required to carry analog broadcast signals.

<sup>16</sup> *Viewability Order*, 22 FCC Rcd at 21084.

Rate Counsel argues that the Utilities Board should have disapproved the \$0.50 DTA rate for the BST and a \$1.99 digital outlet fee that includes a \$0.50 DTA fee for the CPST because the rates do not comply with the Commission's equipment rate rules.<sup>17</sup> Specifically, Rate Counsel argues that CPST subscribers paying the \$1.99 fee are paying more than the maximum permitted rate ("MPR") calculated on Comcast's FCC Form 1205; that Comcast is discriminating among tiers in its DTA charges; that Comcast included excessive maintenance and repair costs in calculating the MPR for the DTAs; and that some portion of the DTA costs should have been allocated to other than video services. We address each of these issues below.

### 1. CPST Charge for Digital Outlet

11. In its appeal, Rate Counsel asserts that Comcast is charging CPST subscribers \$1.99 monthly for a DTA rental fee and that this exceeds the \$1.73 MPR calculated by Comcast on the FCC Form 1205. The Utilities Board and Comcast respond that the \$1.99 is an additional digital outlet service fee and not for additional equipment so it is not regulated.<sup>18</sup> Based on the rate cards provided by Comcast, the \$1.99 digital outlet fee includes the \$0.50 for the DTA and becomes effective at the 4<sup>th</sup> television set. We previously addressed the regulatory status of non-BST digital tier additional outlet service charges and concluded that an additional outlet service charge assessed only against a non-BST digital tier is not subject to LFA jurisdiction.<sup>19</sup> If, however, the charge includes an equipment component, then the equipment rate must be separately calculated based on actual costs and in accordance with our rules. In this case, Comcast has separately calculated and stated the cost of the equipment component (the DTA) as \$0.50. We find the Utilities Board's acceptance of the \$1.99 charge to be reasonable and deny this part of Rate Counsel's appeal.

### 2. Tier Discrimination

12. Rate Counsel argues that Comcast is prohibited from charging different DTA equipment rates for equipment used to receive BST services and equipment used to receive CPST services based on Section 76.923(j) of the Commission's rules,<sup>20</sup> which prohibits a cable operator from reducing equipment rates and counterbalancing that reduction by increasing service charges above the MPR.<sup>21</sup> As the CPST service rate is not regulated, there is no MPR for comparison. However, in this case, Comcast is charging the same rate of \$0.50 for both the CPST and BST, beginning with the fourth television set. As noted above, to the extent the digital outlet fee of \$1.99 includes an equipment component, the equipment rate must be separately calculated based on actual costs and in accordance with our rules. That was done in this case. We find the Utilities Board's decision on this point to be reasonable and deny this part of the appeal.

### 3. Maintenance and Repair Costs

13. Rate Counsel questions the maintenance and repair costs included in the calculation by Comcast of the maximum permitted rate of \$1.73 for the DTA charge. However, we make no conclusion as to the reasonableness of the \$1.73 calculated rate because the Utilities Board did not approve a charge of \$1.73 per DTA. As Rate Counsel points out, the \$.50 charge that was approved by the Utilities Board

<sup>17</sup> See 47 C.F.R. §§ 76.923 and 76.924.

<sup>18</sup> Additional outlet equipment costs, such as materials and labor for installation, are still subject to regulation and must be reasonable.

<sup>19</sup> See *In the Matter of Comcast Cable of Indiana/Michigan/Texas, Inc.*, 19 FCC Rcd 16344 (2004); *In the Matter of Comcast Cablevision of Dallas, Inc.*, 19 FCC Rcd 22687 (2004).

<sup>20</sup> 47 C.F.R. § 76.923(j).

<sup>21</sup> 47 C.F.R. § 76.923 (j).

is below the actual capital cost of the equipment to the cable operator as shown on Comcast's FCC Form 1205.<sup>22</sup> We review only the rate approved by the Utilities Board, which in this case is \$0.50 per DTA, beginning with the fourth outlet. Because that rate is below the cable operator's actual capital costs for the DTA equipment as calculated on its FCC Form 1205, we find that the Utilities Board was reasonable in approving the actual rate and deny this part of the appeal.<sup>23</sup>

#### 4. Allocation to Other Services

14. Rate Counsel argues that the transition to digital service frees up bandwidth for the benefit of Comcast's internet and voice customers. Rate Counsel argues that some portion of the DTA costs should be apportioned to these other services. In this case, unlike network build-outs where apportionment of costs can become an important issue, the DTA equipment has only one purpose, to allow the conversion of a digital signal to analog for reception on an analog television set. The overall benefits of the digital transition cannot be attributed to the use of a DTA converter box that is not used for internet or telephone service. We find Utilities Board's decision not to allocate a portion of the DTA converter costs to other services to be reasonable and deny this part of the appeal.

#### D. Effective Date of DTA Rates

15. Finally, Rate Counsel argues that the effective date of January 1, 2011 for implementation of the approved DTA rate is in violation of the Commission's FCC Form 1205 process rules and rate change notice rules.<sup>24</sup> The Utilities Board responds that Comcast met all the provisions for process and cites specific dates for each of Comcast's actions. Comcast responds that it is providing notice before it charges the DTA fee. We find the Utilities Board's action in establishing an implementation date to be reasonable and deny this part of the appeal.

### III. CONCLUSION

16. Based on the record before us, we conclude that the Utilities Board was not unreasonable in approving Comcast's equipment rates. For this reason, we are denying Rate Counsel's appeal of the Utilities Board's Local Rate Order.

---

<sup>22</sup> See Rate Counsel's Appeal at p. 16.

<sup>23</sup> Rate Counsel also argues that Comcast claimed an unsupported useful life of six years for its DTA converters. With regard to the useful life of six years, we direct Rate Counsel to *Tele-Media Company of Western Connecticut*, 11 FCC Rcd 3161, 3163 (1996) and *TCI of Pennsylvania, Inc.*, 19 FCC Rcd 9454, 9463 (2004), where we approved converter useful lives of five years. Rate Counsel does have a good point that that FCC Form 1205 information must be supported with data at the request of the LFA. In this case, we have no reason to question the Utilities Board's decision based solely on the useful life of six years.

<sup>24</sup> See Rate Counsel's Appeal at p. 17. See 47 C.F.R. §§ 76.923 (timing of filing of FCC Form 1205), 76.933 (review times and tolling information), 76.1603 (customer notice of rate changes) and 76.1622 (annual consumer information requirement).

**IV. ORDERING CLAUSES**

17. Accordingly, IT IS ORDERED that the Appeal of Local Rate Order of New Jersey Board of Public Utilities, BPU Docket No. CR10030162 filed by the New Jersey Division of Rate Counsel IS DENIED.

18. 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

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division  
Media Bureau