

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

In the Matter of )  
 )  
Adelphia Communications Corporation )  
 )  
Proposed Resolution of )  
Cable Programming Service )  
Rate Complaints )  
 )

ORDER

Adopted: September 6, 1996

Released: September 10, 1996

By the Commission:

1. Pursuant to 47 C.F.R. § 1.1204(b)(7), the Cable Services Bureau staff met with Adelphia Communications Corporation ("Adelphia") to discuss the resolution of issues relating to complaints regarding the rates charged for cable programming service offerings. The staff of the Cable Services Bureau has received from Adelphia the attached proposal to resolve the rate complaints. On initial review the Commission believes that the proposal is a reasonable approach to resolve these matters. The Commission directs the Cable Services Bureau to serve a copy of this Proposed Resolution on (i) all local franchising authorities in benchmark and cost-of-service franchises at issue here; and (ii) any party other than a local franchising authority that filed a valid complaint. Parties wishing to comment on the proposal should do so by filing with the Secretary within 30 days of the date of this Order. Reply comments may be filed, but no later than 15 days after that due date. Because it would be unduly burdensome to require that each complainant be served with every comment, pursuant to our Rate Order<sup>1</sup> we will not require the parties to serve their comments on all parties. However, all comments will be publicly available.

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<sup>1</sup> See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) ("Rate Order") at ¶363. See also 47 C.F.R. § 1.1200(a). 11255

2. Accordingly, it is ORDERED that the staff shall serve the complainants with this proposed resolution and provide thirty days for comment.

**FEDERAL COMMUNICATIONS COMMISSION**

**William F. Caton**  
**Acting Secretary**

## TERMS OF PROPOSED RESOLUTION

### I. INTRODUCTION.

1. These terms constitute a resolution of cable programming services tier ("CPST") complaints in certain cable communities in which cable systems owned and operated by Adelphia Communications Corporation and its affiliates and subsidiaries (collectively "Adelphia") created packages of *a la carte* channels. Cable programming services tier ("CPST") rate complaints are pending with respect to each of these communities (herein referred to and defined as the "Resolution Communities").

### II. BACKGROUND.

2. In each of the Resolution Communities, Adelphia began offering one or more packages of *a la carte* channels (the "CableSelect" offerings) between April 1, 1993 and September 30, 1994. In general, the CableSelect offerings were created by unbundling all of the channels from the Resolution Communities' CPSTs and making those channels available for purchase individually as well as in a package.

3. The Bureau has issued Orders finding that CableSelect offerings should be treated as regulated CPSTs in Bucyrus, Ohio (DA 95-622, rel. March 31, 1995) and Charlottesville, Virginia (DA 95-157, rel. Feb. 7, 1995). Adelphia has filed Applications for Review of each of these Orders.

4. Thereafter, the Bureau staff met with Adelphia to discuss resolution of issues relating to the rate complaints and the Bucyrus and Charlottesville decisions. Adelphia

represented to the Commission that its initial decision to use the Commission's benchmark formula to establish its rates was premised upon its good-faith assumption that its CableSelect package was a lawful *a la carte* offering. Adelphia further represented that, in light of the Bucyrus and Charlottesville decisions, application of the benchmark formula produced different rates in the affected communities than the rates actually charged by Adelphia and, in some instances, produced rates under which Adelphia would not be able to recover its costs. As part of this process, Adelphia submitted revised benchmark rate filings for the Resolution Communities premised on the treatment of four of the CableSelect channels as unregulated channels. For several additional communities, Adelphia submitted cost-of-service showings which will be reviewed pursuant to our cost-of-service rate review process and which are not encompassed within the terms of this Resolution.

5. Adelphia and the Commission desire to resolve the pending CPST benchmark rate cases involving the Resolution Communities and the various issues regarding the CableSelect offerings described above.

### III. DEFINITIONS.

6. As used herein, the following definitions will apply:
- (a) "Resolution Communities" means the communities served by cable systems owned and operated by Adelphia listed in Exhibit 1.
  - (b) "Resolution Community Eligible Subscribers" means all non-bulk, residential subscribers of record in the Adelphia systems listed in Exhibit 2 as of the date bills are issued reflecting Refunds.
  - (c) "Effective Date" means the date on which the Commission adopts the

Resolution Order.

- (d) "Going Forward Rules" means the Commission's rules adopted in the *Sixth Order on Reconsideration*, MM Docket No. 92-266, 76 RR 2d 859 (1994), including all subsequent clarifications and amendments.
- (e) "Implementation Deadline" means the date occurring 120 days after the Effective Date.
- (f) "Interest" means the Internal Revenue Service rate of interest for tax payments.
- (g) "Lifeline BST Rate" means a maximum permitted rate for the basic service tier calculated by counting all of the CableSelect channels offered on September 1, 1993 as regulated channels.
- (h) "Migrated Product Tier" or "MPT" means a tier consisting of up to four (4) services packaged together as described below in paragraph 13(g) and any services added to such package in accordance with said paragraph 13(g).
- (i) "Refunds" means credits on subscriber bills.
- (j) "Resolution Order" means an order issued by the Commission approving the terms of this Proposed Resolution.

#### IV. TERMS.

7. Adelfia accepts the jurisdiction of the Commission over it and the subject matter of these rate resolutions for purposes of the Resolution Order.

8. All of Adelfia's CPST rate cases for the Resolution Communities for the period through December 31, 1995 are finally resolved under the terms provided herein.

9. Adelphia agrees that the terms contained in this Proposed Resolution shall be incorporated by reference in the Resolution Order. Assuming the adoption of these terms in the Resolution Order, Adelphia 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. Adelphia and the Commission will reasonably cooperate in any such defense of these terms.

10. Assuming the adoption of these terms in the Resolution Order, Adelphia 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 resolving outstanding CPST complaints in the Resolution Communities and the various issues regarding the CableSelect offerings and do not constitute an admission by Adelphia of any violation of, or failure to conform to, the 1992 Cable Act, Commission Rules, or any other applicable law, rule, or policy, nor constitute an admission by the Commission of any error in the implementation of its a la carte regulations.

12. The Commission will not institute, on its own motion, any proceedings against Adelphia based upon the information obtained during consideration of the Proposed Resolution. In addition, in the absence of additional facts, any allegations and other circumstances involved in consideration of this Proposed Resolution will not be used by any party against Adelphia with respect to any future proceeding.

13. In settlement of Adelphia's CPST rate cases for the period through December 31, 1995 in the Resolution Communities and the various issues regarding the CableSelect offerings offered by its cable systems, Adelphia hereby agrees to the following terms, conditions, and

procedures which will facilitate a fair and expeditious resolution of those matters in a manner that serves the public interest:

(a) The Bureau has reviewed Adelphia's revised benchmark rate submissions and has determined a maximum permitted per channel rate in each Resolution Community reflecting the exclusion of four of the CableSelect channels from the count of regulated channels for purposes of applying the Commission's benchmark rate rules.

(b) Subject to the right of local franchising authorities ("LFAs") to opt out under this subparagraph, Adelphia shall issue Refunds to Resolution Community Eligible Subscribers as set forth in Exhibit 2. Such Refunds already include applicable Interest through December 31, 1996. An LFA of an Resolution Community listed in Exhibit 1 may elect to opt out of the Refunds established under this subparagraph by providing notice to the Commission and Adelphia no later than 30 days following the Effective Date. Such notice shall: (a) be in writing; (b) be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, with a copy by certified mail to Adelphia Communications Corp., 5 West Third Street, Coudersport, PA 16915, attention: Randall D. Fisher, Esq., Vice President and General Counsel; (c) identify the local franchising authority and community unit identification number for the franchise area; and (d) reflect the clear intent to opt out of the Refund provision of this subparagraph. However, such notice need not meet any other requirements and may be in letter form. An election by an LFA in a particular Resolution Community to opt out of the Refunds under this subparagraph will not otherwise affect the applicability of the remaining provisions of this Proposed Resolution in such

community, including but not limited to subparagraphs (d), (e), and (f) hereof.

(c) Adelphia will begin providing refunds to Resolution Community Eligible Subscribers no later than the Implementation Deadline. Refunds will be reflected on subscriber bills as equal monthly credits of at least \$0.50 until full payment is made, except that the last payment may be credited in an amount of less than \$0.50. In all cases, the Refund payment period shall not exceed 12 months. In the event the Refund amounts are not fully paid by the date through which Interest has been calculated (as noted in subparagraph (b)), Adelphia shall be required to calculate and pay additional Interest through the date on which all Refunds are fully paid.

(d) Subject to the right of LFAs to opt out under subparagraph (b), the Refunds issued to the Resolution Communities pursuant to that subparagraph shall account for and finally resolve (i) all BST and CPST rate cases filed in the Resolution Communities prior to December 31, 1995 and (ii) the reasonableness of the BST and CPST rates in the Resolution Communities on that date. In the event that an LFA of an Resolution Community exercises its right to opt out of the Refunds under subparagraph (b), any rate order adopted by said LFA or by the Commission with respect to Adelphia's Form 393 and Form 1200 series maximum permitted rates will reflect the exclusion of four of the CableSelect channels from the count of regulated channels for purposes of applying the Commission's benchmark rate rules. The maximum permitted rate for those four channels, on a per channel basis, will be equal to the maximum permitted rate, on a per channel basis, for the other CPST channels in such community.

(e) Adelphia will not seek repayment from any LFA of any Resolution



Community of franchise fee overpayments otherwise due Adelphia as a result of the payment of the Refunds specified in Exhibit 2. This provision will not apply in any Resolution Community as to which the LFA exercises its opt out election as described in subparagraph (b).

(f) Adelphia agrees to cap its combined regulated BST and CPST rates in the Resolution Communities so that they do not increase on an overall basis as a result of this Resolution; provided, however, that Adelphia may include in any BST and CPST rates established pursuant to this resolution, or thereafter, such inflation and external costs as Adelphia is entitled to recover pursuant to the Commission's rules, including any Form 1240 increases which Adelphia has previously implemented or becomes entitled to implement. Subject to the foregoing, Adelphia, no later than the Implementation Deadline, will make such adjustments to the regulated BST and CPST rates in the Resolution Communities as are necessary (i) to reduce the BST rate so that it reflects the calculation of a Lifeline BST Rate and (ii) to increase CPST rates by an amount per subscriber no greater than the per subscriber reduction in the BST rate from the maximum permitted rate, but such CPST rate, as adjusted, shall be capped so as to not exceed the maximum permitted rate calculated using the channel count described in subparagraph (d). See Exhibit 3. In the event the LFA of an Resolution Community exercises its right to opt out under subparagraph (b), Adelphia will not be required to make the adjustments described in this subparagraph and will be permitted to establish BST and CPST rates equal to the maximum permitted rates calculated using the channel count described in subparagraph (d).

(g) At any time at its discretion, Adelphia may package four of the services that were available as CableSelect offerings on September 1, 1993, together with up to two new services (*i.e.*, services first added to the system after September 30, 1994), as a single "Migrated Product Tier" in any Resolution Community. Adelphia may not require the subscription to any other tier, other than the BST, as a condition for subscribing to any MPT created pursuant to this subparagraph and may not require subscription to any such MPT as a condition for subscription to any other tier. The re-tiering of these services is permitted under Section 76.981(b) of the Commission's rules, 47 C.F.R. § 76.981(b); does not constitute a negative option under the Cable Television Consumer Protection and Competition Act of 1992; and, when the MPT is offered, Adelphia will not be required to re-market the MPT to existing subscribers who previously received all of the migrated services contained in the MPT. These actions can be taken without regard to any state or local law which may be inconsistent with the terms of this subparagraph.

(h) In any community in which Adelphia creates an MPT pursuant to subparagraph (g), Adelphia will set the initial rate for said MPT, (i) with respect to the four services that were available as Cable Select offerings on September 1, 1993, on a per channel basis, at a level equal to the rate then being charged for any CPST offered in such community, calculated consistent with this resolution, and (ii) with respect to the two new services referred to in subparagraph (g), at \$0.20 per channel plus the amount of program license fees for each of such services. Adelphia may thereafter add any number of new services to its MPT and may increase the price for the MPT up to \$0.20 plus the amount of the program license fee for each new service added. Adelphia may increase

the price of an MPT for inflation and external costs and new services consistent with the Commission's rate regulations governing CPSTs, and these new services shall not be considered new services added for purposes of the limit on service additions and rate increases pursuant to the Going Forward Rules.

(i) On or after January 1, 1998, Adelphia may reclassify any MPT created pursuant to subparagraphs (g) and (h) as a New Product Tier ("NPT"), as defined in Section 76.987 of the Commission's rules, 47 C.F.R. § 76.987, including subsequent clarifications or amendments thereto. These NPTs will be treated as all other NPTs under the Commission's rules. The reclassification is permitted under Section 76.981(b) of the Commission's rules, 47 C.F.R. § 76.981(b); does not constitute a negative option under the 1992 Cable Act; and does not require Adelphia to re-market the reclassified NPT to existing MPT subscribers. Nothing in the Resolution shall be construed to prevent Adelphia from creating other NPTs and/or offering *a la carte* channels pursuant to the Commission's rules. These actions can be taken without regard to any state or local law which may be inconsistent with the terms of this subparagraph.

(j) The Commission, consistent with the terms set forth herein, hereby reconsiders on its own Motion, the Bucyrus, Ohio and Charlottesville, Virginia Orders, and Adelphia hereby petitions to withdraw its pending petitions for reconsideration and applications for review of said Orders and such petitions to withdraw are hereby granted by the Commission. The decision that four CableSelect channels will not be counted as regulated channels for benchmark rate calculation purposes will be deemed incorporated in such reconsidered Orders and shall be binding on any decision relating to Adelphia's

BST or CPST rates. As of the Effective Date, the Resolution Order will vacate and supersede the Bucyrus, Ohio and Charlottesville, Virginia Orders. Upon the vacating of these rulings, Adelphia's pending petition for reconsideration and applications for review concerning said rulings will be deemed to be withdrawn. In addition, Adelphia's pending petition for reconsideration of the Commission's decision (FCC 95-378) denying Adelphia's application for review of the Bureau's South Dade County Letter-of-Inquiry ruling (DA 94-1277) also will be deemed to be withdrawn.

(k) A copy of this Proposed Resolution shall be provided for comment to all LFAs in the Resolution Communities and to each additional party that filed a valid complaint on FCC Form 329, pursuant to Section 76.950 of the Commission's rules, 47 C.F.R. § 76.950.

(l) Except as provided in subparagraph (m) hereof, these terms of this Proposed Resolution may not be terminated or modified without the mutual written consent of Adelphia and the Commission. The Commission's consent to any such modification or termination shall be demonstrated by an order of the Commission.

(m) Notwithstanding the terms hereof, Adelphia may avail itself of any applicable modifications of any law or regulation governing the rates charged in any community that it serves, including the adoption by the Commission of any regulation governing rates as applied to the cable industry generally. If Adelphia exercises this election, the terms contained herein shall be superseded upon the effective date of such law or regulation, except that Adelphia shall provide Refunds to Resolution Community Eligible Subscribers pursuant to the terms of this Proposed Resolution.

(n) Nothing herein shall restrict the ability of Adelphia to adjust its rates of any community that it serves in the event such rates are not regulated for any reason, including changes from the 1996 Telecommunications Act or relevant Commission rules.

14. The Resolution Order shall affirmatively state that any and all waivers of Commission 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 Adelphia's compliance with the terms of the Proposed Resolution violates any Commission rule or order, and, in any proceeding before the Commission brought by a third party, a showing by Adelphia that it has complied with these terms shall constitute a defense to any claim that Adelphia's actions in meeting the terms constitute a violation of any applicable Commission rule or order.

15. Assuming the adoption of these terms, these terms shall become effective when the Commission issues the Resolution Order.

16. If any provision, clause, or part of this Proposed Resolution as embodied in the Resolution Order is invalidated by a court, the remainder of this Proposed Resolution shall not be affected thereby and shall remain in effect; provided, however, that if such invalidation is material to this Proposed Resolution, Adelphia and the Commission shall attempt in good faith to reconstitute the Proposed Resolution in a form that is, to the maximum extent possible, consistent with the original intent of the Proposed Resolution. If any such good faith effort to reconstitute the Proposed Resolution is not successful, neither Adelphia nor the Commission will be bound by its terms.

## EXHIBIT 1

ADELPHIA CABLE COMMUNICATIONS  
COMMUNITIES SUBJECT TO RESOLUTION

COMMUNITY	CUID	SUBSCRIBERS	SUBSCRIBERS
		BST	CPST
Syracuse	NY0728	40,217	30,807
West Seneca	NY0320	14,803	14,117
Amherst	NY0353	32,149	30,346
Cheektowaga	NY0319	27,111	25,847
Colden	NY1341	668	645
Lake Placid	NY0001	1,106	1,022
Saranac Lake	NY0002	2,118	1,935
Tupper Lake	NY0003	1,744	1,691
Berkeley	NJ0086	18,442	17,649
Ocean	NJ0216	2,139	2,046
Lacey	NJ0153	9,114	8,773
Island Heights	NJ0198	697	675
Lorain	OH0202	18,210	17,863
Hudson	OH0923	5,408	5,269
Macedonia	OH0926	2,187	2,139
Hiram	OH1288	136	131
Bucyrus	OH0054	5,012	4,883
Haverford	PA1140	12,479	12,284
Marple	PA1131	6,371	6,221
Peters	PA1519	4,948	4,760
Upper St. Clair	PA1459	5,885	5,725
Pleasant Hills	PA1232	2,924	2,813
West Mifflin	PA0666	7,573	7,327
Mt. Oliver	PA1245	1,229	1,196
Mt. Lebanon	PA1231	11,160	10,611
Bethel Park	PA1344	11,187	10,763
Suterville	PA1355	292	292
Murrysville	PA0153	5,676	5,676
Charlottesville	VA0039	12,353	11,639/8,920*
Crozet	VA0202	847	801/705*
Waynesboro	VA0040	7,075	6,600
Frederick	VA0121	6,815	6,474
Hilton Head	SC0058	17,688	16,379
Palm Beach Shores	FL0088	556	480
Greenacres	FL0481	3,427	3,312

COMMUNITY	CUID	SUBSCRIBERS	
		BST	CPST
Greenacres	FL0522	481	464
Delray Beach	FL0749	1,707	1,644
Wellington	FL0420	7,950	7,640
Palm Beach Gardens	FL0087	9,354	8,901
Williamstown	MA0005	2,511	2,368/612*
Total		321,749	300,208

\* denotes existence of more than one CPST.

## EXHIBIT 2 - REFUNDS

CUID	BST SUBS	CPST SUBS*	REFUND PER CUID	REFUND PER BST SUB*	REFUND PER CPST SUB*
NY0728	40,217		\$120,651	\$3.00	
NY0320	14,803		44,409	3.00	
NY0353	32,149		96,447	3.00	
NY0319	27,111		81,333	3.00	
NY1341	668		2,004	3.00	
NY0001	1,106		33,854	30.61	
NY0002	2,118		116,958	55.22	
NY0003	1,744		86,224	49.44	
NJ0086	18,442	17,649	311,855	3.00	17.54
NJ0216	2,139	2,046	42,045	3.00	20.41
NJ0153	9,114	8,773	149,006	3.00	16.87
NJ0198	697	675	2,091	3.00	
OH0202	18,210		462,499	25.40	
OH0923	5,408	5,269	151,467	3.00	28.67
OH0926	2,187	2,139	30,943	3.00	14.40
OH1288	136	131	896	3.00	6.72
OH0054	5,012		15,036	3.00	
PA1140	12,479		37,437	3.00	
PA1131	6,371		19,113	3.00	
PA1519	4,948		22,934	4.63	
PA1459	5,885		17,655	3.00	
PA1232	2,924	2,813	41,064	5.91	9.08
PA0666	7,573	7,327	101,053	4.78	8.85
PA1245	1,229		3,687	3.00	
PA1231	11,160		33,480	3.00	



<b>CUID</b>	<b>BST SUBS</b>	<b>CPST SUBS*</b>	<b>REFUND PER CUID</b>	<b>REFUND PER BST SUB*</b>	<b>REFUND PER CPST SUB*</b>
PA1344	11,187		33,561	3.00	
PA1355	292	292	2,730	3.00	9.35
PA0153	5,676		17,028	3.00	
VA0039	12,353		177,798	14.39	
VA0202	847		2,541	3.00	
VA0040	7,075	6,600	42,107	3.00	6.16
VA0121	6,815		20,445	3.00	
SC0058	17,688		53,064	3.00	
FL0088	556		1,668	3.00	
FL0481	3,427		10,281	3.00	
FL0522	481		1,443	3.00	
FL0749	1,707		5,121	3.00	
FL0420	7,950		23,850	3.00	
FL0087	9,354		28,062	3.00	
MA0005	1,899	612	9,132	3.00	5.61
<b>TOTAL</b>			<b>\$2,452,957</b>		

\* Refunds per subscriber may be higher or lower than amounts indicated, depending on final subscriber count prior to payment date and on final interest calculations; provided, however, that all subscribers will receive at least \$3.00 in refunds. In the case of CPST subscribers, the \$3.00 minimum refund is incorporated in the Refund Per CPST Subscriber amounts listed above. The number of CPST subscribers is omitted in those communities where CPST subscribers are not due any additional refunds beyond the \$3.00 minimum refund.

**EXHIBIT 3  
REDUCTIONS IN BST RATES TO  
LIFELINE BASIC MAXIMUM PERMITTED LEVELS\***

COMMUNITY	CUID	BST REDUCTION
Lake Placid, NY	NY0001	\$4.13
Saranac Lake, NY	NY0002	\$4.44
Tupper Lake, NY	NY0003	\$4.44
Berkeley, NJ [rebuild]	NJ0086	\$1.17
Ocean, NJ	NJ0216	\$1.17
Lacey, NJ	NJ0153	\$1.17
Hudson, OH	OH0923	\$1.26
Pleasant Hills, PA	PA1232	\$0.17
Palm Beach Shores, FL	FL0088	\$5.17
Greenacres, FL	FL0481	\$4.32
Greenacres, FL	FL0522	\$2.57

\* Not all communities receive reductions because BST rate is already at or below Lifeline calculation or because BST rate is not regulated at the local level.

**REDUCTIONS IN CPST RATES TO  
MAXIMUM PERMITTED LEVELS\***

COMMUNITY	CUID	CPST REDUCTION
Berkeley (nonrebuild)	NJ0086	\$2.48
Hiram, OH	OH1288	\$0.73
Suterville, PA	PA1355	\$0.98
Charlottesville, VA	VA0039	\$0.17 [CPST 1]
Waynesboro, VA	VA0040	\$0.73
Palm Beach Shores, FL	FL0088	\$0.09
Williamstown, MA	MA0005	\$1.21 [CPST 2]

\* Only communities whose CPST rates, as of December 31, 1995, exceeded maximum permitted levels are affected.