

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Village Attorney **DATE:** March 22, 2005  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "A RESOLUTION AUTHORIZING AN ORDER SETTING CABLE TELEVISION RATES FOR EQUIPMENT AND INSTALLATION", as presented.

**SUMMARY OF ITEM:**

Adoption of the attached resolution shall authorize an order setting cable television rates for equipment and installation.

**RECORD OF ACTION TAKEN:**

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RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING AN ORDER SETTING CABLE TELEVISION  
RATES FOR EQUIPMENT AND INSTALLATION**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Order (the "Order") setting cable televisions rates for equipment and installation pursuant to FCC Form 1205 filed on or about March 1, 2004, as set forth in the form of the Order submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Order, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Order.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

VILLAGE OF DOWNERS GROVE, ILLINOIS

ORDER

SETTING CABLE TELEVISION RATES FOR EQUIPMENT AND INSTALLATION  
PURSUANT TO FCC FORM 1205 FILED ON OR ABOUT MARCH 1, 2004

March \_\_\_\_, 2005

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ATTACHMENT 1: FINAL REPORT BY ASHPAUGH & SCULCO, CPAs, PLC AND FRONT RANGE CONSULTING, INC., TO THE PARTICIPATING LOCAL FRANCHISING AUTHORITIES REGARDING THE NATIONAL FCC FORM 1205 FILED BY COMCAST CABLE COMMUNICATIONS, INC., IN 2004 (WITH APPENDICES)

ATTACHMENT 2: ADDENDUM TO FINAL REPORT BY ASHPAUGH & SCULCO, CPAs, PLC AND FRONT RANGE CONSULTING, INC., TO THE PARTICIPATING LOCAL FRANCHISING AUTHORITIES REGARDING THE NATIONAL FCC FORM 1205 FILED BY COMCAST CABLE COMMUNICATIONS, INC., IN 2004 (January 18, 2005)

ATTACHMENT 3: ERRATA TO FINAL REPORT ON THE COMCAST NATIONAL FORM 1205

ATTACHMENT 4: COMCAST COMMENTS ON CONSULTANTS' REPORT

ATTACHMENT 5: SUPPLEMENTAL REPORT OF ASHPAUGH & SCULCO, CPAs, PLC AND FRONT RANGE CONSULTING, INC., TO THE FEBRUARY 11, 2005 COMMENTS

OF COMCAST CABLE COMMUNICATIONS, LLC ON THE FINAL REPORT AND  
ADDENDUM REGARDING THE NATIONAL FCC FORM 1205 (February 2005)

ORDER  
SETTING CABLE TELEVISION RATES FOR EQUIPMENT AND INSTALLATION  
PURSUANT TO FCC FORM 1205 FILED ON OR ABOUT MARCH 1, 2004

**I. BACKGROUND**

**A. The Village of Downers Grove's Review of Comcast's National Form 1205**

1. The Village of Downers Grove, Illinois ("Village"), has limited authority to regulate cable operator equipment and installation rates under applicable law and Federal Communications Commission ("FCC") regulations. The FCC has developed forms that an operator subject to regulation must file to justify equipment rates.

2. Comcast Cable Communications, Inc. ("Comcast"), filed with the Village jurisdictions FCC Form 1205, "Determining Regulated Equipment and Installation Costs, 'Equipment Form'" ("2004 Form 1205"), on or about March 1, 2004, seeking the Village's approval of a change in the maximum permitted rates for equipment and installation.

3. The filing Comcast made in the Village was also submitted to other communities nationwide. Comcast relied on the same data in setting equipment and installation rates for all the communities that received the national filing. The Village joined with other communities to hire financial consultants Ashpaugh & Sculco, CPAs, PLC, and Front Range Consulting, Inc. ("Consultants"), to review the national Form 1205 filing.

4. After review of the materials submitted by Comcast, and detailed discussions and analysis of the issues raised, and using best available information when necessary, the Consultants developed recommendations and conclusions as to the recalculation of Comcast's equipment and installation rates, which are contained in (a) the Final Report by Ashpaugh &

Sculco, CPAs, PLC And Front Range Consulting, Inc., to the Participating Local Franchising Authorities Regarding The National FCC Form 1205 Filed by Comcast Cable Communications, Inc., in 2004 (January 2005), appended to this Order as Attachment 1 (“Final Report”); (b) Addendum to Final Report by Ashpaugh & Sculco, CPAs, PLC and Front Range Consulting, Inc., to the Participating Local Franchising Authorities Regarding the National FCC Form 1205 Filed by Comcast Cable Communications, Inc., in 2004 (January 18, 2005), appended to this Order as Attachment 2 (“Addendum”); and (c) Errata to Final Report on the Comcast National Form 1205, appended to this Order as Attachment 3.

5. Comcast submitted comments on these documents on February 11, 2005 (“Comcast Comments”). The Comcast Comments are appended to this Order as Attachment 4. The Consultants submitted a response to these comments in February 2005 (“Supplemental Report”). That response is appended to this Order as Attachment 5. The four Consultant documents are referred to collectively herein as the “Consultant Reports.”

6. FCC rules place the burden on the cable operator to prove that its existing rates for basic service and equipment are reasonable under applicable federal law and regulations. 47 C.F.R. § 76.937(a). The Village has provided Comcast with ample opportunity to provide the necessary support for its rates. To the extent Comcast has failed to carry its burden of proof, the Village may reject Comcast’s rates, set rates itself based on the best available information, and order refunds. *See, e.g., Comcast Cablevision of Tallahassee, Inc.: Appeal of Local Rate Order of City of Tallahassee, Fla.*, DA 95-1561, 10 FCC Rcd 7686 at ¶¶ 28-29, 37, 48-49, and 54 (1995) (“*Tallahassee*”).

7. Having considered the record before it, the Consultant Reports, comments made by Comcast, and any comments made by the public, the Village finds, based on the best

information available to it, and for reasons set forth below and in the Consultant Reports, that Comcast's filed rates for equipment and installation are unreasonable and do not comply with FCC rules and applicable law. It further finds, for reasons set forth below and in the Consultant Reports, that the rates should be no higher than the rates in Column B, below. The rates in Column A are those proposed by Comcast.

	A Comcast Rates as Filed	B Rates Adopted
<b>Equipment Rates</b>		
Remote Control	\$ 0.33	\$ 0.29
Basic-Only Converter (Converter 1)	\$ 1.30	\$ 0.49
Addressable or Digital Converter or DVR (Converter 2)	\$ 4.83	\$ 4.10
HDTV Converter (Converter 3)	\$ 8.33	\$ 6.06
<b>Installation Rates</b>		
Hourly Service Charge	\$ 35.17	\$ 30.10
Unwired Installation	\$ 52.23	\$ 37.88
Prewired Installation	\$ 31.40	\$ 19.83
Additional Outlet (Same Trip)	\$ 17.15	\$ 12.28
Additional Outlet (Separate Trip)	\$ 25.31	\$ 19.72
Move Outlet	\$ 23.60	\$ 14.14
Upgrade (Non-addressable)	\$ 17.12	\$ 12.61
Downgrade (Non-addressable)	\$ 15.55	\$ 12.58
Upgrade/Downgrade, Addressable	\$ 1.99	\$ 1.99
VCR Connect (Same Trip)	\$ 8.79	-
VCR Connect (Separate Trip)	\$ 16.10	\$ 13.78
Customer Trouble Calls	\$ 23.27	\$ 9.95

## II. FINDINGS AND CONCLUSIONS

8. As shown in the Supplemental Report, the Consultants identified a number of errors in the Form 1205 that Comcast neither disputes nor corrects. Supplemental Report, Part III. The Village adopts the undisputed adjustments made by Consultants, for reasons set forth

in the Final Report. These errors alone justify a finding that the Comcast proposed rates are unjust and unreasonable.

9. The Consultants proceeded to recommend rates based upon the best information available to them. The specific adjustments proposed (and resulting recommended rates) are reasonable in light of the information available. More specifically, Consultants made the following adjustments that Comcast disputed.

A. **Bonuses and Commissions**

10. Comcast included as costs in its Form 1205 bonuses and commissions paid to its employees. Final Report at 15-16. The Consultants eliminated these costs because Comcast failed to provide to provide proof that the bonus and commission payments were in fact related to Form 1205 regulated activities, despite requests that it provide such support. Final Report at 15-16.

11. Comcast argued in response that a general “Step A” factor based on salaries and wages was sufficient to properly allocate bonuses and commissions between regulated and unregulated equipment. Comcast Comments at 15. But there is no reason to suppose that any of the bonuses and commissions are actually paid for activities properly recognized in the Form 1205, a predicate for allocation of any costs to the equipment basket. The company withheld information the Consultants requested in order to determine under what circumstances bonuses and commissions were paid. Even if one assumed that some bonuses or commissions relate to equipment, there is no reason to suppose that the proportion in which bonuses or commissions are paid on regulated equipment is related to the proportion in which *overall* salaries and wages relate to regulated equipment. The Comcast Comments do not justify Comcast’s allocation methodology, or justify rejection of the Consultants’ recommendations.

12. The Consultants also eliminated the bonuses and commissions in light of unbundling concerns. As the Consultants' Supplemental Report explains at 3-4, a series of FCC decisions has made clear that costs can be claimed in the operator's equipment basket "only if they were unbundled from the regulated programming service rates or are new costs incurred since the operator unbundled its equipment costs." See, e.g., *TCI Cablevision of Oregon, Inc. d/b/a TCI of Tualatin Valley, Inc.*, DA 99-2227, 14 FCC Rcd. 17685 at ¶ 6 (Cab. Serv. Bur. 1999); *Jones Communications of Georgia/South Carolina Inc. d/b/a Jones Communications*, DA 04-2448 at ¶ 4 (Aug. 4, 2004).

13. The Consultants' review of a number of 1994 Form 1205s indicated bonuses and commissions were not included in Form 1205s by a substantial number of systems covered by Comcast's national filing. Final Report at 15.

14. The Comcast Comments do not dispute the fact that FCC rules prohibit Comcast from importing into the equipment basket any costs that were not initially unbundled from the Basic Service Tier ("BST") rate without making a corresponding adjustment to the BST rate to prevent double recovery. Rather, Comcast argues that due to "changing business practices," the FCC's unbundling rules should not be applied. Comcast Comments at 8. Similar arguments were raised and rejected in the *Tualatin* proceeding, and we conclude that they should be rejected here as well, for reasons indicated in the *Tualatin* decision and in the Consultant Reports.

15. Comcast also suggests that "it is possible" that these costs are new costs not incurred at the time of the 1994 unbundling, and that it is possible that the costs were unbundled as part of some other adjustment, and not separately accounted for. Comcast Comments at 8. Comcast, however, provides no evidence to support either supposition, and hence fails to satisfy

its burden of proof, particularly in light of its failure to provide information regarding past system unbundling. *See* Final Report at 15; Supplemental Report at 4-5.

16. The problems identified by Consultants, considered separately or together justified elimination of the bonuses and commissions from rates.

**B. Maintenance and Repair – Plant and Equipment**

17. The Consultants' review of prior 1205s for systems covered by Comcast's filing indicates that many of the systems had not included Maintenance and Repair – Plant and Equipment ("M&R-Plant") costs in the equipment basket, as would have occurred had the cost been unbundled from service rates. Comcast did not claim or show that M&R-Plant costs had been unbundled from service rates for all or even most of the systems covered by its filing; some of its responses to data requests indicated unbundling had not occurred uniformly. Comcast opposes the Consultants' unbundling adjustment concerning M&R-Plant primarily on policy grounds. Its arguments are rejected, for reasons stated in Section II.A above and in the Consultant Reports.

18. Setting aside the unbundling problem, the M&R-Plant costs Comcast included in rates were not supported. As explained in the Final Report, Section VIII.C, M&R-Plant costs are associated with both regulated and unregulated activities. Comcast developed an allocation methodology for dividing costs among activities, and argues that its methodology was appropriate. Comcast Comments at 13-15. The Consultants argue, however, that the methodology in fact over-allocates costs to regulated equipment. Supplemental Report at 9-10. The Village concludes Comcast's methodology was not supported, and over allocates costs to the equipment basket, for reasons set out in the Consultant Reports. The unbundling problem

identified by the Consultants, considered separately or together with the allocation problem, justified elimination of the M&R-Plant costs from rates.

**C. Payroll Taxes**

19. Since it was necessary to remove bonuses and commissions from Comcast's costs, the Consultants also eliminated a pro-rata share of payroll taxes corresponding to the bonus and commission payments. Final Report at 17. The Comcast Comments do not appear to address this issue.

**D. Property Taxes and Insurance.**

20. The Consultants disallowed certain property taxes and insurance costs based on unbundling concerns similar to those discussed above, and Comcast opposed the unbundling adjustment for similar reasons. Comcast's arguments are rejected, for reasons stated in Section II.A above and in the Consultant Reports.

21. In addition, the Consultants' review showed that Comcast had over-allocated property tax and insurance costs to regulated services. The issues (and Comcast's comments) are identical to those discussed in connection with the M&R-Plant. For reasons suggested above, and in the Consultant Reports, *see* particularly Supplemental Report at 9-10, the Village finds Comcast's allocations were unreasonable, even setting aside unbundling concerns. The unbundling problem identified by the Consultants, considered separately or together with the allocation problem, justified elimination of the property tax and insurance costs.

**E. Miscellaneous Regulated Hours**

**1. Warehouse Personnel**

22. The Consultants disallowed warehouse personnel costs based on unbundling concerns similar to those discussed above. Comcast provides no reasonable ground for including costs it failed to unbundle, *see* Section II.A above and the Consultant Reports.

23. In addition, the Consultants initially concluded that the personnel costs had been included twice, once in Schedule B (recovering it in the Hourly Service Charge (“HSC”)) and once in Schedule C (as a capitalized cost). The Comcast Comments state that Comcast did not in fact include any warehousing costs in Schedule C, but only on Schedule B. Comcast Comments at 16-17. The Consultants do not disagree. However, the Consultants also state that the warehouse personnel cost estimate is not adequately supported. The Village agrees, for reasons indicated in the Supplemental Report at 13-14.

24. Elimination of the costs was appropriate given the unbundling problems, considered separately or together with the failure to adequately support the costs.

**2. Office Personnel**

25. The Consultants identified a similar unbundling concern with respect to office personnel costs. Final Report at 19. Comcast provides no reasonable ground for including costs it failed to unbundle, *see* Section II.A above and the Consultant Reports.

26. The Consultants also noted that Comcast had failed to adequately support the time estimates used to arrive at the office personnel costs. Comcast was asked to provide support for these estimates, including any studies performed, and to identify the individuals making the estimates. The Consultants noted that Comcast did not provide any of the requested information, but merely stated that the company had used “past experience” – in effect,

demanding that the Village take Comcast's estimates on faith. Final Report at 19. Thus, even assuming that office personnel costs had not been disqualified by the unbundling issue, Comcast failed to carry its burden of proof with respect to those costs.

27. Comcast argued that it had provided documents related to the office personnel costs in question. Comcast Comments at 17. The Consultants noted that Comcast broke down its office converter maintenance hours into three components, but failed to provide any supporting studies or detailed explanations, and failed to identify an individual responsible for Comcast's brief estimate. The Consultants specifically asked Comcast to explain the high number of hours associated with this personnel category, but Comcast did not provide any support. Supplemental Report at 14-15.

28. Elimination of the costs was appropriate given the unbundling problems, and the failure of proof, considered separately or together.

#### **F. Installation Activity Hours**

29. The Consultants' analysis of the 2004 Form 1205 revealed two problems with respect to the employee time required for installation activities: (1) a general lack of consistent support for Comcast's employee time estimates; and (2) failure to distinguish between time related to installation of subscriber premises equipment (inside the demarcation point), which is relevant to Form 1205 rates, and time related to activities outside the demarcation point such as installation of subscriber drops, which is not. The second problem resulted in an adjustment both to employee time and to contractor time reported by Comcast, and is discussed below in Section II.I.

30. With respect to the lack of support for employee installation times: the Consultants' Requests for Information ("RFIs") requested Comcast to provide support for the

employee installation times used by each of the sample systems. Final Report at 19-20. For most of the sample systems, Comcast provided a table of work tasks that used a point system. Comcast's sample systems claimed that the work task tables were used by its technical personnel to develop the estimated times. Final Report at 20. In addition, Comcast supplied each sample system with a sheet showing the approximate installation times used by Comcast in the previous year's rate filing, which was only for the former AT&T Broadband systems. It asked personnel to provide their own estimates of install time (although in more than half the cases, the guidance from corporate was accepted). Comcast also had data regarding contractor install times, which should have served as a check on the employee data.

31. This data pointed in varying directions. The Comcast Comments note that install times are stable from year to year, yet Comcast's install time estimates in some cases varied significantly from historical data. The times resulting from use of point system data varied from local field estimates, even though the point system is used to schedule field work. The Consultants sought information to explain the variance, and it was not provided. In short, as explained in the Final Report at 23-24 and the Supplemental Report at 5-8, given the significant problems with the data, Comcast's failure to explain the variations from estimate to estimate, and the failure to separate out tasks properly included in the Form 1205 from those that are not properly included in the Form 1205, Comcast's install estimates could not be used without adjustment.

32. The adjustments made to the install time were reasonable in light of the data available, and particularly in light of the company's failure to adequately explain its own data. Where point system data was sufficiently detailed, the Consultants used that data to adjust the time for employee installations. The Consultants explained why that data appeared most

reliable, Supplemental Report at 7, and that explanation appears reasonable. Comcast's objections to use of the data are not convincing: it claims that point system data was not sufficiently detailed for some systems, but the Consultants make it clear that only point system data that *was* detailed was used in making the adjustment. Comcast claimed its point system typically excluded drive time, but there is evidence to the contrary. Supplemental Report at 7. Finally, Comcast complains that the point system was not designed for rate regulation, but fails to explain why this makes it less reliable. Even assuming that there are problems with the point system data, it appears to be the best data available for developing more reasonable installation time estimates, and the Village therefore adopts the adjustments recommended by the Consultants.

**G. Annual Employee Labor Hours**

33. Comcast reduced annual employee labor hours in the sample systems by 373 hours to reflect non-productive hours, such as sick leave, holidays, safety meetings, and general paperwork. Addendum at 1. The Consultants found that the support provided by Comcast for this component was out of date and was based on another operator's labor policies. Comcast admitted as much. Addendum at 1-2, Comcast Comments at 12.

34. The Consultants included 224 non-productive hours, based on historical data from Comcast systems. Addendum at 1-2. Comcast argues this is unreasonable because under its policies employees may take between 224-304 paid hours off, depending on seniority. But as the Consultants explain, historical experience indicates less than half this time is typically taken. Comcast also seems to complain that the Consultants' estimate does not adequately account for administrative/training time, but the problem for Comcast is that it has not supported any time for those activities. The Consultants' historical data actually includes more time for training

and administrative activities than did the TCI estimates on which the filing was based. The Village finds that Comcast has failed to carry its burden of proof with respect to its claimed non-productive hours, and that the Consultants' adjustment to this figure is based on the best available information.

#### **H. Inside Wiring**

35. Comcast included in its 2004 Form 1205 calculation time spent on trouble calls related to inside wiring maintenance. But Comcast provides wire maintenance services in two ways: on an individual call basis, and pursuant to a wire maintenance plan program. The Consultants point out that under wire maintenance plans, Comcast does not simply maintain cable lines. It also maintains telephone and home network computer wiring. As far as the record shows, Comcast has made no effort to distinguish between calls related to its cable television plant and other inside wiring – it has included all wire maintenance trouble calls in the Form 1205 calculation. Comcast bills subscribers monthly for this service but has made no adjustment to reduce inside wire costs by the revenue collected, even though Comcast has included the costs of services provided under the wire maintenance plans.

36. The record suggests that a substantial portion of Comcast's subscribers may be taking the wire maintenance plans, and calling on Comcast to maintain non-cable wiring. Comcast does not claim that its trouble call reports included only cable-related calls. Comcast's inclusion of non-cable related calls was error. The Consultants were therefore required to adjust Comcast's estimates in order to ensure that Comcast did not include wire maintenance costs unrelated to regulated cable equipment. The Consultants eliminated fifty per cent (50%) of the trouble calls from the Comcast data. Comcast does not propose an alternative, or suggest that

there is a more rational correction that could be made in light of the available data. Supplemental Report at 16.

37. Accordingly, the Village finds that Comcast failed to support its estimates, and that the Consultants' adjustment to those estimates was proper.

#### **I. Weighted Installation Times**

38. In determining the average installation times used in the Form 1205, Comcast used the installation time estimates only for Comcast in-house technical personnel, omitting the time estimates relating to Comcast's contractors, even though Comcast's information reveals that contractors perform approximately 54% of all of the installation activities for the twenty sample systems. Final Report at 29. The Consultants proposed to adjust installation times to reflect a weighted average of time spent on installs by employees and time spent on installs by contractors. They concluded this adjustment was necessary because contractor install times were substantially shorter than employee install times in most cases, Final Report at 29, so that a failure to average would overstate the normal time required to complete an installation, and over-recover costs. Final Report at 30.

39. Comcast objects to inclusion of contractor installation time because (it claims) contractor reported times do not include drive time. However, as the Supplemental Report points out, (a) the difference in times cannot be explained by drive time alone; and (b) elsewhere in the Form 1205, Comcast has treated its reported contractor install times as if those included drive time. For that reason alone, an adjustment appears to be appropriate, and given the treatment of the contractor hours elsewhere in the Form 1205, the Consultants' approach appears reasonable given the information available.

40. The Consultants made another adjustment to contractor-related install costs (and employee-related install costs) to which Comcast objects. Under FCC regulations, regulated equipment – customer premises equipment – includes equipment inside a “demarcation point” twelve inches outside the connection to the home. Installation and other equipment costs outside that demarcation point belong to the network and cannot be charged to the subscriber as an equipment rate; rather, Comcast recovers such costs through its rates for services. Final Report at 20-21. Comcast’s data responses indicate that its installation calculations included cost related to activities outside the demarcation point. Final Report at 25.

41. In order to remove these costs (and associated hours), the Consultants used the ratio of drop-related costs to total contractor labor costs from the review of Comcast’s 2003 Form 1205 filed with Montgomery County, Maryland. The Consultants modified the contractor labor costs in the 2004 Form 1205 based upon this earlier Comcast data. Final Report at 27.

42. In its comments, Comcast appears to argue that drop-related labor costs outside the demarcation point can be included in the Form 1205 under *Comcast Cablevision of Tallahassee, Inc.*, 10 FCC Rcd. 7686 (1995). Comcast Comments at 16. However, that decision at best permits an operator to choose between capitalizing drop labor costs in service rates, or recovering them through the Form 1205. *Tallahassee* at ¶¶ 34-37. As the Supplemental Report shows, Comcast has chosen the former approach, and cannot now seek to recover the costs through the Form 1205. See Supplemental Report at 11-13. Thus, under the *Tallahassee* rule, exclusion of drop labor costs was appropriate, and the Consultants’ adjustment appears reasonable based on the information available.

**J. VCR Connections**

43. Comcast included in its 2004 Form 1205 time estimates for making VCR connections for the subscriber, both at the same time as an installation and as a separate trip. Final Report at 31.

44. The Consultants found that Comcast appeared to have included the activity of making VCR connections as part of its normal installation process, and thus no separate charge is warranted. Comcast also failed to provide sufficient support for its claimed charge for a VCR connection as a separate installation. On that basis, the Consultants initially recommended that Comcast not be permitted to make a separate charge for VCR connections. Final Report at 31.

45. The Comcast Comments argued that the company had in fact provided some limited information about VCR connection costs and time estimates, and hence that the Village should not eliminate any charge for VCR connections. Comcast Comments at 18-19.

46. The Consultants' Supplemental Report did not disagree that in principle subscribers could be charged for VCR connection, but noted that Comcast had not addressed the factual issue as to the inclusion of VCR connection costs in the normal installation rates charged to subscribers and hence the potential for double recovery. However, the Consultants noted that installers would be likely to incur some costs not otherwise recovered when they made separate trips for VCR connections. Thus, the Supplemental Report recommended a maximum permitted rate of \$13.78 for VCR connections requiring a separate trip, but disallowed an additional charge as part of the normal installation process. Supplemental Report at 17.

47. The Village finds that the Consultants' revised recommendations are reasonable in light of the record and Comcast's failure to show that an additional charge is warranted at the

time of installation. However, Comcast may charge for VCR connection on a separate trip at the rate stated in the Supplemental Report.

**K. Customer Trouble Calls**

48. Comcast's 2004 Form 1205 included a separate charge for service calls where customer-owned equipment is at fault. Comcast estimated that such a service call averages 40 minutes to complete. The Consultants, however, concluded that Comcast had provided no support for this activity either in its "point" system data or by specifically identifying time for the activity. Final Report at 31.

49. Absent some supporting information, the Consultants concluded it was only possible to include an amount that included drive time and a short time for customer interaction. Accordingly, the Consultants reduced Comcast's estimate by half. Final Report at 31.

50. The Consultants also identified a further problem with Comcast's "trouble call" charge. Based on their review of the original 1994 filed Form 1205s, the Consultants do not believe that these costs were originally unbundled by Comcast. If they were not, Comcast is already recovering the costs associated with these trouble calls in its BST rates. However, as a conservative approach, given the absence of further information, the Consultants declined to eliminate this category entirely. Final Report at 32.

51. In response, Comcast suggested that a likely scenario for a trouble call of this type would involve more than twenty minutes' time. Comcast also stated that its technicians sometimes resolve problems for subscribers even when Comcast equipment is not involved. Comcast Comments at 18. The problem is that Comcast's hypotheticals simply do not provide any substantive support for its result. Given the company's failure to provide any reasonable support for its estimate, and the unbundling issue, the choice is really between allowing no time

for this activity, or a short time. The Consultants' choice of twenty minutes is reasonable under these circumstances. Supplemental Report at 16.

**L. DVR Converters**

52. In several of the communities participating in the joint review of the national Form 1205, Comcast included a charge on its rate card for converters incorporating digital video recorders ("DVR"). However, Comcast did not provide support in its 2004 Form 1205 for such a charge. The Consultants found that the costs of DVR converters were not included in the 2004 Form 1205 filing. Final Report at 32.

53. In its comments, Comcast claimed that the DVR charge should actually have been classified as a service charge. Comcast Comments at 19. However, DVRs are equipment, and are used to receive basic service. The charge for the DVR is therefore appropriately regulated pursuant to the Form 1205. (Comcast has not shown that in fact it provides any service over and above the equipment in connection with DVR usage by subscribers. As the Consultants suggest, if there is a separate service, Comcast may be able to charge for it, but it cannot bundle service and equipment charges.) See Final Report at 32; Supplemental Report at 17. In light of the absence of any support for a DVR charge, the Consultants recommend allowing Comcast to charge subscribers the same amount it charges for addressable converters. As this is the equipment closest in kind to a DVR, that approach appears reasonable.

54. The Village finds that Comcast has not supported an equipment charge for a DVR converter, and finds that Consultants have reasonably permitted Comcast to charge the same price it charges for addressable converters. Of course, nothing in this Order prevents Comcast from supporting a different charge for a DVR in its next filing.

**M. Unreturned Equipment Charge**

55. The Consultants noted that Comcast had introduced, but not supported, a charge of \$250 to subscribers for failure to return a CableCard. Final Report at 34. In its comments, Comcast argued that charges for unreturned equipment should not be calculated on Form 1205. Comcast Comments at 19.

56. The FCC has recently ruled that a cable operator's fees for unreturned equipment are not regulated pursuant to Form 1205, although they are subject to regulation pursuant to local or state laws. *Basic Cable Service and Equipment Rates of Charter Communications Entertainment I, LLC, St. Louis, MO (CUID No. MO0545): Appeal of Local Rate Order*, File No. CSB-A-0720, Order, DA 05-392 at ¶¶ 4-5 (Media Bureau Feb. 14, 2005). Accordingly, this Order will not establish an amount for or otherwise regulate Comcast's unreturned equipment charges. See Supplemental Report at 18. However, the Village is not endorsing Comcast's charge through this Order, and reserves all its rights to address such charges pursuant to state or local law.

**III. ADDITIONAL RECOMMENDATIONS OF CONSULTANTS**

57. The Consultants' investigation of the 2004 Form 1205 revealed a number of apparent errors and improprieties in Comcast's filing for which specific adjustments could not be made. While these findings do not directly affect the rates set herein, they are noted below insofar as they may affect future filings.

**A. Contract Labor**

58. Along with equipment-related costs incurred by its own employees, Comcast may recover on Form 1205 costs for contract labor. The Consultants found that Comcast did not use

actual invoices to calculate its contract labor costs. Instead, Comcast merely estimated the contract labor costs based on the number of installations contained in certain Comcast reports. It was unclear, however, whether all the activities in this estimate were actually billed to Comcast. Final Report at 16.

59. Comcast refused to provide actual invoices for the Consultants' review. The fact that the Consultants were not given any real data to review raises questions as to the accuracy of Comcast's estimates. The Consultants recommend that Comcast be required to use actual invoices from the contractor and allocate those invoices to regulated and unregulated activities. Regulators would then be able to distinguish between "real" costs and hypothetical costs based upon unverified data. Final Report at 16. The Village concludes this recommendation is reasonable, particularly in light of problems in Comcast data that were identified.

#### **B. Sampling Issues**

60. Under the pertinent statute and FCC rules, operators may make a single, national filing that sets charges for equipment and installation. But, rather than collect data from all its systems and use that data to set rates, Comcast examines data from a sample of systems. The accuracy of the sampling methodology is thus critical to the reasonableness of the rates.

61. In its original 2004 Form 1205, Comcast did not provide the general description of methodology and justification of reasonableness required by 47 C.F.R. § 76.923(c)(1). The Consultants asked Comcast to provide the required information. Comcast's only response was to claim that its averaging methodology had already been approved by the FCC in *TCI of Richardson, Inc.: Petition for Reconsideration of Bureau Order Resolving Local Rate Appeals (CUID TX1228), Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd. 11700 (1999) ("*Richardson*"). Final Report at 35.

62. *Richardson*, however, did not approve the specific methodology used by Comcast in the 2004 Form 1205. *Richardson* established that a sampling methodology could be acceptable. But the sampling methodology used in *Richardson* is different from that used in the 2004 Form 1205. The mere fact that a sample can be used, and the FCC's willingness to accept the particular sampling used in *Richardson*, does not by itself establish whether Comcast's sample here was statistically valid. Final Report at 35-39.

63. The Consultants identified a number of potential problems with Comcast's sampling methodology. Among other things, the Consultants compared the equipment and installation rates in the 2004 Form 1205 with Comcast's equipment and installation rates in other jurisdictions where Comcast did not use the national Form 1205, but rather used special local Forms 1205 instead. The differences found by the Consultants raise serious concerns that Comcast may be over-recovering its costs in converter rates and installation charges and cast serious doubt on the revenue-neutrality of Comcast's overall Form 1205 methodology. Final Report at 36, 40-41. Comcast responded to the potential problem regarding the number of sample systems used, but then refused to produce documents that the Consultants requested in order to evaluate Comcast's claims.

64. Due to the difficulty of obtaining timely and complete information from Comcast, as noted above, it does not seem to be practical to address the validity of the sampling methodology in the 2004 Form 1205 at this time. Thus, no adjustments are made to Comcast's rates in this Order based on the concerns described in this Section III.B. The Village does, however, conclude that there is good reason to examine this methodology if its is used in future filings, and to decide based on that examination whether to reject it or make any necessary corrections that may be permitted under FCC regulations.

**C. Responses to Data Requests**

65. A significant portion of the Final Report, Supplemental Report and Comcast Comments is devoted to Comcast's responses – or failure to respond – to the Consultants' data requests. What is clear is that there were many cases in which Comcast failed to produce data, even where it had produced comparable data in response to Form 1205s for other communities in the past (and for the current year). For example, even setting aside disputes with respect to the form in which certain invoices were produced, Comcast appears to have failed to produce even documents it said it would produce. *See, e.g.*, Supplemental Report at 21. It is also clear that the requests were not unreasonable given apparent problems with Comcast's other books, records and representations, as suggested by the Consultants' discussion of cable modem costs.

66. We recognize that this is Comcast's first national filing. However, the Village concludes that Comcast's responses are fairly taken into account in deciding whether the recommendations of the Consultants are reasonable based on the best information available. Further, the Village puts Comcast on notice that it should respond promptly and fully to requests for information in connection with future filings, in a way designed to permit the Village to conduct a review of documents. It should take steps to ensure that it can perform consistent with this paragraph. If it fails to do so, it may be subject to any remedies permitted under the Village's franchise or applicable law.

**IV. ORDERING CLAUSES**

IT IS THEREFORE ORDERED THAT:

67. Comcast's maximum permitted rates for equipment and installation are hereby set in accordance with the rates calculated in the Final Report and (with respect to VCR Connect

(Separate Trip)) the Supplemental Report, as set forth in the table at paragraph 7, above. The rates set herein will govern Comcast's equipment and installation rates until Comcast lawfully implements a further rate change pursuant to applicable law.

68. Except as otherwise noted herein, the Village adopts the recommendations and the rationale for the recommendations made by Consultants.

69. It is unclear whether Comcast has implemented the basic-only converter rate for which it filed in the 2004 Form 1205. To the extent it has not done so, the greater refund due to such failure to implement the filed rate shall be included in the requirements for reductions and refunds established herein. In addition, Comcast shall, along with the certification required by ¶ 72, file a complete explanation of its failure to implement the basic-only converter rate.

70. As soon as possible, but in any event within sixty (60) days from the effective date of this Order, Comcast shall make all rate reductions and refunds that are necessary based on the rates shown above. Comcast shall refund all amounts charged to subscribers for equipment or installations that exceed the maximum permitted amounts specified herein in accordance with 47 C.F.R. § 76.942(d), and shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments, pursuant to 47 C.F.R. § 76.942(e).

71. Any charges for equipment, installation, or other services based on an hourly rate shall reflect an HSC no greater than the maximum permissible HSC shown above.

72. Comcast shall file with the Village within ninety days from the date of this Order a certification, signed by an authorized representative of Comcast, stating whether Comcast has complied fully with all provisions of this Order, describing in detail the precise measures taken to implement this Order.

73. Comcast may charge rates less than the maximum rates indicated above for equipment and installation, as long as such rates are consistent with applicable law and are applied in a uniform and nondiscriminatory way, pursuant to applicable federal, state, and local laws and regulations.

74. The rates set herein are subject to further reduction and refund to the extent permitted under applicable law and regulations, as the same may be amended from time to time.

75. The findings herein are based on the representations of Comcast. Should information come to the Village's attention that these representations were inaccurate in any material way, the Village reserves the right to take appropriate action. This Order is not to be construed as a finding that the Village has accepted as correct any specific entry, calculation, explanation or argument made by Comcast not specifically addressed herein.

76. The Village reserves all of its rights with respect to rate regulation, including, but not limited to, any right it may have to reopen this rate proceeding based on new information or rulings by any governing authority, if it appears that such new information or rulings could alter the reasonable rates prescribed by FCC regulations, and any right it may have to "true up" overcharges or undercharges in connection with future rate filings pursuant to 47 C.F.R. § 76.922(e)(3).

77. This Order constitutes the written decision required by 47 C.F.R. § 76.936(a).

78. This Order shall be effective **[describe effective date]**.

79. This Order shall be released to the public and to Comcast, and a public notice shall be published stating that this Order has been issued and is available for review, pursuant to 47 C.F.R. § 76.936(b).

Village of Downers Grove

\_\_\_\_\_  
[Name]  
[Title]

\_\_\_\_\_  
Date

ATTACHMENT 1: FINAL REPORT BY ASHPAUGH & SCULCO, CPAs, PLC AND FRONT RANGE CONSULTING, INC., TO THE PARTICIPATING LOCAL FRANCHISING AUTHORITIES REGARDING THE NATIONAL FCC FORM 1205 FILED BY COMCAST CABLE COMMUNICATIONS, INC., IN 2004 (WITH APPENDICES)

ATTACHMENT 2: ADDENDUM TO FINAL REPORT BY ASHPAUGH & SCULCO, CPAs,  
PLC AND FRONT RANGE CONSULTING, INC., TO THE PARTICIPATING LOCAL  
FRANCHISING AUTHORITIES REGARDING THE NATIONAL FCC FORM 1205 FILED  
BY COMCAST CABLE COMMUNICATIONS, INC., IN 2004 (January 18, 2005)

ATTACHMENT 3: ERRATA TO FINAL REPORT ON THE COMCAST NATIONAL FORM  
1205

ATTACHMENT 4: COMMENTS OF COMCAST CABLE COMMUNICATIONS, LLC ON  
THE FINAL REPORT AND ADDENDUM REGARDING THE NATIONAL FCC  
FORM 1205 (February 11, 2005)

ATTACHMENT 5: SUPPLEMENTAL REPORT OF ASHPAUGH & SCULCO, CPAs, PLC  
AND FRONT RANGE CONSULTING, INC., TO THE FEBRUARY 11, 2005  
COMMENTS OF COMCAST CABLE COMMUNICATIONS, LLC ON THE FINAL  
REPORT AND ADDENDUM REGARDING THE NATIONAL FCC FORM 1205  
(February 2005)