

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Annual Assessment of the Status of Competition
in the Market for Delivery of Video Programming

MB Docket No. 07-269

COMMENTS OF MONTGOMERY COUNTY, MARYLAND

Summary

Montgomery County, Maryland (the “County”), submits these comments in response to the Commission’s Supplemental Notice of Inquiry (the “Supplemental NOI”),¹ to emphasize two points: first, the rates paid by subscribers for cable service continue to increase even in the face of competition; and second, those rates must be considered together with the very high rates that operators charge for equipment needed to obtain the service. Viewing the first in isolation from the second does not actually reflect the effect on consumers, and the effect of high equipment rates is underscored by the fact that consumers have no competitive alternatives for acquiring such equipment. The County also restates its concerns regarding the effects on consumers of the bundling of voice, video and data services, as discussed in its earlier comments in this docket.

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Supplemental Notice of Inquiry, MB Docket 07-269 (rel. April 9, 2009). The Supplemental NOI asked for information as of June 30, 2008, and June 30, 2009, on the same issues raised in the preceding Notice of Inquiry in this docket, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket 07-269 (rel. Jan. 16, 2009) (the “NOI”).

I. RATES FOR CABLE SERVICE CONTINUE TO INCREASE UNCHECKED.

The NOI requested information on the prices charged for various cable programming packages.² The rates charged by the three providers currently serving Montgomery County residents – Comcast, RCN and Verizon – appear in Table 1. As described in the County’s comments of May 20, 2009, in this docket, and further illustrated in Table 1, the rates paid by subscribers for cable television services continue to increase. Notwithstanding the findings of the Commission, and arguments from providers that wireline competition “is the only form of competition that effectively restrains incumbent cable operators’ prices,”³ the County’s experience shows that wireline competition does not restrain rates. For example, even though Comcast must compete with two wireline providers, Comcast’s rate for basic service in the County increased by over 11% between 2007 and 2009 and its rate for the cable programming services tier increased by 9%.

Table 1 – Cable Service Rates in Montgomery County⁴

	2007	2008	2009	2007-09 % Increase
Comcast				
Basic	\$17.30	\$17.25	\$19.25	11.3
Expanded Basic	\$58.10	\$60.35	\$63.30	9.0
RCN				
Basic	n.a.	n.a.	\$17.95	n.a.
Expanded Basic	\$53.95	\$56.94	\$61.44	12.2
Verizon				
Basic	\$12.99	\$12.99	\$12.99	0
Expanded Basic	\$39.99	\$47.99	\$47.99	20.0

n.a. = price not available.

² NOI at ¶ 4.

³ Comments of AT&T at 2-3 (filed May 20, 2009).

⁴ Rates listed are those in effect on June 30 of each year.

Table 1 also shows that the competitors do not seem to be affected by competition any more than incumbents. Verizon has held its basic rate steady since 2007, but it has raised its expanded basic rate by 20% in just two years. In addition, Verizon recently informed the County that it will increase its rate for expanded basic service from \$47.99 to \$57.99 effective October 1, 2009. This will amount to a 45% rate increase in less than three years, and a year-over-year increase of 20.8%. And RCN's rate has increased by 12.2% since 2007.

The cable industry attempts to justify rate increases in excess of the general inflation rate by pointing to the investment the industry has made in new technology in response to competition, arguing that subscribers are getting more for their money.⁵ This is beside the point, however, because the industry has made no attempt to prove that there is a clear or measurable relationship between those expenditures and what subscribers are paying. What is clear and measurable is that subscribers are paying more and more, with no end in sight. As the County discussed in detail in earlier comments in this docket, a fully competitive market for cable services does not exist in Montgomery County, and if it does not exist there, then it is unlikely to exist anywhere.⁶ The Commission needs to reconsider both its assumptions and its policies.

II. AS CABLE OPERATORS CONVERT TO ALL-DIGITAL TECHNOLOGY, THE COMMISSION MUST LOOK CLOSELY AT EQUIPMENT RATES.

The NOI requested information on the prices charged for equipment needed to receive cable services.⁷ Montgomery County's experience shows that head-to-head competition is not restraining rates for cable equipment any more than it is holding down monthly service rates. Furthermore, the effect of equipment rates on the total price a subscriber pays can be significant,

⁵ NCTA Comments at 24 (filed May 20, 2009).

⁶ Montgomery County Comments at 5-15 (filed May 20, 2009).

⁷ NOI at ¶ 4.

yet the Commission's discussion of cable rates in recent years has paid little attention to equipment rates. For example, the Commission's most recent Report on Cable Industry Prices⁸ devotes only a single paragraph to equipment prices, and does not discuss the effects of the price of mandatory equipment rental on the total price paid by subscribers. Nor does the most recent annual report on the state of competition in the video programming market discuss the effects of equipment prices on subscribers.⁹

The Commission in recent years may not have considered equipment prices to be a significant issue, because equipment rates have been relatively low. Of course, those rates have been low largely because they have been regulated. Today, however, fewer and fewer jurisdictions are able to regulate rates, as the Commission has, with few exceptions, granted petitions for findings of effective competition in community after community. In any event, regardless of the reason, subscribers in Montgomery County are paying substantial amounts to rent equipment, and recent trends suggest subscribers will continue to pay substantial amounts for equipment that they can obtain from no other source.

The trend toward higher charges for equipment is especially troubling because in 1996 the Commission was directed by Congress to create a competitive market for navigation equipment, but thirteen years later has yet to do so.¹⁰ The County concurs with the comments filed earlier in this docket by Verizon (standards for navigation devices should not rely on cable-

⁸ *Implementation of Section 3 of the Cable Television Consumer Protection & Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Services, and Equipment*, Report on Cable Industry Prices, MM Docket No. 92-266 (rel. Jan. 16, 2009, at ¶ 45).

⁹ *Annual Assessment of the State of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, MB Docket No. 06-189 (rel. Jan. 16, 2009).

¹⁰ Section 629 of the Communications Act was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, which took effect Feb. 8, 1996.

centric technology)¹¹ and Verimatrix (FCC has not done enough to impose standards for consumer electronics).¹² Notwithstanding NCTA’s claim that the cable industry is still working on the issue,¹³ the County believes that the Commission has given the cable industry ample opportunity to comply with the statutory mandate.

Table 2 – Cable Equipment Rates in Montgomery County¹⁴

	2007	2008	2009
Comcast			
Basic only converter	\$0.90	\$1.10	\$1.10
Addressable converter	\$3.75	\$3.70	\$3.40
HD digital converter	\$6.50	\$7.95	\$7.95
Remote control	\$0.20	\$0.25	\$0.25
Cable Card	n.c.	n.c.	n.c.
Digital Adapter	n.a.	n.a.	\$1.99
RCN			
Digital converter	\$7.95	n.a.	\$3.95
Additional converter	\$7.95	n.a.	\$6.95
HD converter	\$9.95	n.a.	\$11.95
DVR	\$12.95	n.a.	\$17.95
Cable Card	\$1.50	n.a.	\$1.50
Digital Adapter	n.a.	n.a.	\$3.95
Verizon			
Std Def. Converter	\$4.99	\$4.99	\$7.99
HD converter	\$9.99	\$9.99	\$9.99
HD DVR	\$12.99	\$15.99	\$15.99
HD Home Media DVR	\$19.99	\$19.99	\$19.99
CableCard	n.a.	n.a.	\$3.99
Digital Adapter	n.a.	n.a.	\$3.99

n.c. = no charge

n.a.= price not available

Table 2 contains the rates for cable equipment in Montgomery County for 2007, 2008 and 2009. The table shows that rates for traditional analog converters remain low, but both addressable converters used to deliver pay-per-view and other advanced services, and high definition converters, are much more expensive. For example, the monthly rates for HD

¹¹ Verizon Comments at 5 (filed May 20, 2009).

¹² Verimatrix Comments at 3-6 (filed May 20, 2009).

¹³ NCTA Comments at 38-43 (filed May 20, 2009).

¹⁴ Rates listed are those in effect on June 30 of each year.

converters are substantial: subscribers can pay \$7.95 (Comcast), \$9.99 (Verizon), or \$11.95 (RCN). Comcast's rate for an addressable converter is three times that of a basic-only converter, and its rate for an HD converter is over seven times that of a basic-only box.

Furthermore, equipment rates add significantly to the total cost of obtaining cable service. Table 2 shows that Verizon charges \$7.99 for its standard converter: this is 71% of the price for basic-only service. Comcast and RCN's rates for standard digital converters are lower -- \$3.40 and \$3.95, respectively -- but they still add over 5% to the monthly rate for expanded basic service.

Another factor the Commission must consider is that many subscribers have more than one television set. In fact, Comcast estimates that there are 2.8 television sets in the average household.¹⁵ For the large number of subscribers in the County who have more than one television set, paying for a converter on every television set adds substantial amounts to their monthly bills. Table 3, on page 7, shows the effects of equipment charges on rates for subscribers who pay for service to more than one television set. Subscribers do have the option of paying lower rates for digital adapters, instead of set-top boxes, but these devices do not provide access to the on-screen program guide or to video-on-demand services. Thus, if a subscriber wants the benefit of the full capability of provider's technology, these devices are not adequate. Rates for digital adapters appear in Table 2.

¹⁵ *Comcast's Montgomery Digital Network Enhancement and "The World of More,"* presentation by Comcast to Montgomery County (June 2009).

Table 3 – 2009 Rates for Service plus Equipment

	Service + one set	Increase over service only	Service + two sets	Increase over service only	Service + three sets	Increase over service only
Comcast						
Basic only (analog) + converter + remote	\$20.60	7.0%	\$21.95	14.0%	\$23.30	21.0%
Expanded Basic + Addressable converter + remote	\$66.95	5.8%	\$70.60	11.5%	\$74.25	17.3%
Expanded basic + HD digital converter + remote	\$71.50	13.0%	\$79.70	25.9%	\$87.90	38.9%
RCN						
Basic + digital converter	\$21.90	22.0%	\$28.85	60.7%	\$35.80	93%
Expanded basic + digital converter	\$65.39	6.4%	\$72.34	17.7%	\$79.29	29.1%
Expanded basic + HD converter	\$73.39	19.4%	\$85.34	38.9%	\$97.29	58.3%
Verizon						
Basic + standard definition converter	\$20.98	61.5%	\$28.97	123%	\$36.96	184%
Expanded basic + standard definition converter	\$55.98	16.6%	\$63.97	33.3%	\$71.96	49.9%
Expanded basic + HD converter	\$57.98	20.8%	\$67.97	41.6%	\$77.96	62.4%

Table 3 and Figures 1 through 3 (see page 8) illustrate the dramatic effects of equipment rates on the amounts subscribers pay, especially in the case of Verizon. A Verizon basic-only subscriber renting a single converter will pay 61% more than the basic service price. A Verizon HD subscriber pays an extra 21%. The effects are even greater for subscribers with multiple televisions: if a Verizon subscriber has three sets and wants HD service on all of them, the subscriber will pay an additional 62%. A comparable RCN subscriber would pay an additional 58%, making the additional 39% paid by a comparable Comcast subscriber seem almost reasonable. In other words, equipment adds a lot to the rates subscribers pay, and the Commission needs to specifically address this issue in any discussion of the cost of cable service.

Figure 1: Basic Only With Equipment Rates

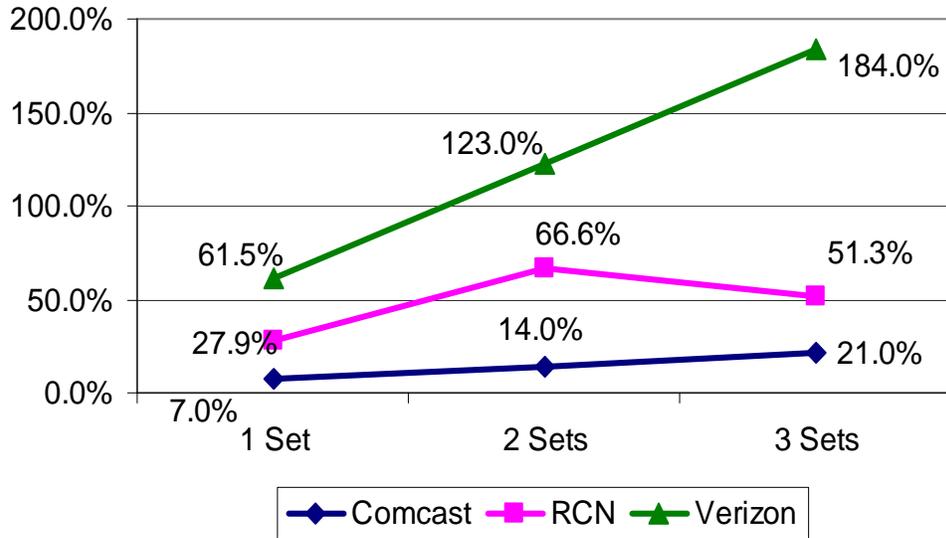


Figure 2: Expanded Basic With Equipment Rates

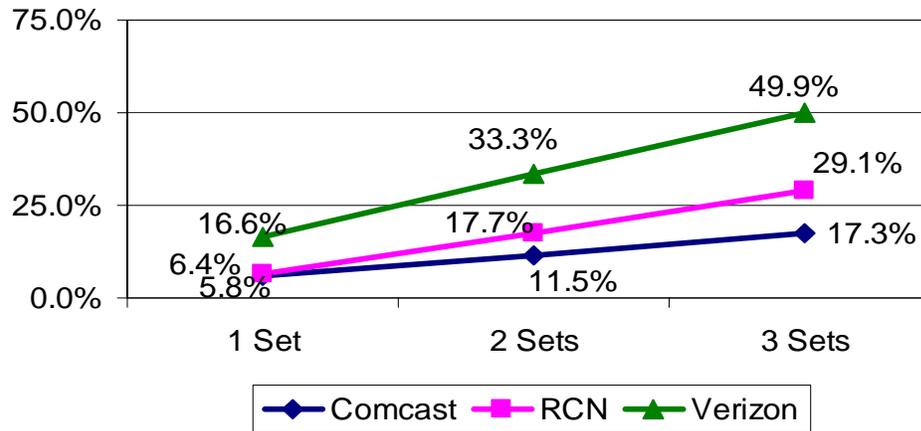
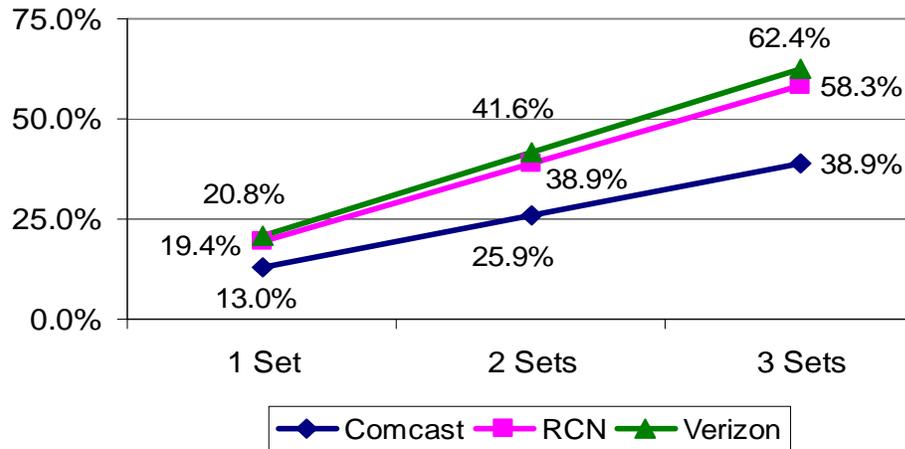


Figure 3: Expanded Basic HD With HD Equipment Rates



The effects of the failure to effectively decouple cable service from equipment rental will become even more pronounced as incumbent operators shift to all-digital systems. As discussed above, digital equipment is more expensive than older analog equipment, and until recently the rates for such equipment were contained in many jurisdictions by the application of the Commission's rate regulation rules. In view of how much Verizon and RCN are already charging for such equipment, in a non-rate-regulated environment there is no reason to believe that Comcast and other incumbents will not raise their rates for converter rentals. Furthermore, subscribers without digital televisions will be forced to pay for additional equipment – a converter or a digital adapter – to receive even unencrypted signals made available on basic tier service. Even if the provider offers CableCard at no charge, as Comcast does, some subscribers with older sets will still have to pay for other equipment, because a CableCard is useless if the set has no slot for the card.¹⁶ Consequently, as cable operators abandon analog technology, they are simultaneously expanding their captive equipment rental market. Subscribers can only rent equipment from the operator, while the operator remains free to charge whatever rate it chooses.

III. BUNDLING DOES NOT PROMOTE COMPETITION.

In earlier comments in this docket, the County pointed out that bundling of voice, video and data services does not promote competition, because bundling makes it very difficult for consumers to compare service offerings, and because the costs of switching – such as the inconvenience associated with changing email addresses – are significant.¹⁷ Other parties also addressed this issue in their earlier comments.

¹⁶ In addition, current generation CableCards do not allow subscribers access to program guides or other interactive features.

¹⁷ Montgomery County Comments at 12-15 (filed May 20, 2009).

The County concurs with Comcast, which has observed that new entrants and incumbent cable operators use bundling to drive up their revenues per subscriber and to increase customer retention.¹⁸ This suggests that bundling does not necessarily bring prices down, and that consumers find the costs of switching providers to be high. Bundling therefore does not advance competition.

The City of New Orleans has stated that the consumer benefits of bundling are not clear, because it is unclear whether consumers buy service bundles to get discounts or because of the convenience of getting all services from one provider.¹⁹ The County questions, however, whether a careful examination of those two factors would demonstrate that bundling is truly beneficial. One of the problems with bundling is that consumers cannot really compare prices: they may pay a lower price for the bundle than they would for all three services from the same provider, but by taking the bundle they surrender the opportunity of getting the best price for the best level of service on each of the three services. Bundling thus results in fewer choices for consumers. Furthermore, after taking the bundle, consumers will find it more difficult to switch providers. Thus, the perceived benefits of bundling may in fact be drawbacks.

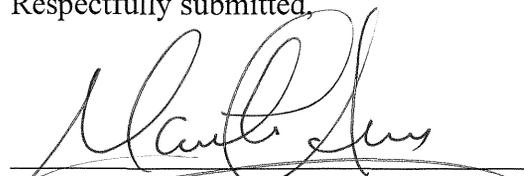
¹⁸ Comcast Comments at 45 (filed May 20, 2009).

¹⁹ Comments of Cable and Telecommunications Committee of the New Orleans City Council at 10-13 (filed May 20, 2009).

CONCLUSION

Montgomery County urges the Commission to carefully examine the reasons for continuing increases in cable rates, and especially to consider the effects of high equipment rates on subscribers.

Respectfully submitted,



E. Steven Emanuel, Chief Information Officer
Mitsuko R. Herrera, Cable Communications
Administrator
Marjorie Williams, Franchise Manager
Office of Cable and Communication Services
Montgomery County
100 Maryland Avenue, Room 250
Rockville, MD 20850

Matthew C. Ames
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue N.W.
Suite 1000
Washington, DC 20036-46320
(202) 785-0600

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