

## RESOLUTION NO. R-100-05

### REGARDING THE MAXIMUM PERMITTED EQUIPMENT AND INSTALLATION RATES SET FORTH IN THE FEDERAL COMMUNICATIONS COMMISSION FORMS 1205 FILED BY COMCAST CABLE COMMUNICATIONS, LLC ON OR ABOUT MARCH 1, 2004 AND APRIL 1, 2005

WHEREAS, the City of Wheaton (hereinafter the "City") is a municipal corporation organized pursuant to Illinois law; and

WHEREAS, Section 623 of the Cable Communications Policy Act of 1984, 47 U.S.C. § 543, as amended, authorizes local franchising authorities, such as the City, to regulate rates for equipment and installations; and

WHEREAS, the City is certified as a rate regulation authority pursuant to rules of the Federal Communications Commission (hereinafter "FCC"); and

WHEREAS, Comcast Cable Communications, LLC (hereinafter "Comcast") filed with the City an FCC Form 1205 "Determining Regulated Equipment and Installation Costs, 'Equipment Form'" on or about March 1, 2004, to set forth and justify the rates it could charge to subscribers in the City for equipment and installations for the period from July 1, 2004, through June 30, 2005 (hereinafter the "2004 FCC Form 1205"); and

WHEREAS, the 2004 FCC Form 1205 was based on aggregated data that was used nationwide; and

WHEREAS, the City retained Ashpaugh & Sculco, CPAs, PLC and Front Range Consulting, Inc. (hereinafter the "Consultants") to review the 2004 FCC Form 1205; and

WHEREAS, the Consultants prepared a final report concerning the 2004 FCC Form 1205, which report contains various findings, conclusions and recommendations, and submitted that final report to the City in January 2005; and

WHEREAS, the Consultants recommended adjustments to the 2004 FCC Form 1205, as reflected in the Consultants' report and in the 2004 national FCC Form 1205 prepared by the Consultants (the "Consultants' National Form 1205"); and

WHEREAS, on March 28, 2005, the City adopted an "Order of the City of Wheaton Setting Cable Television Rates for Equipment and Installation Pursuant to FCC Form 1205 Filed On or About March 1, 2004" (the "2004 Form 1205 Rate Order"), which order adopted the Consultants' recommendations and the Consultants' National Form 1205; and

WHEREAS, Comcast appealed the 2004 Form 1205 Rate Order to the Federal Communications Commission (the "FCC") and filed a stay request; and

WHEREAS, the FCC has not yet ruled on the pending appeal of the 2004 Form 1205 Rate Order but granted Comcast's stay request; and

WHEREAS, Comcast filed with the City an FCC Form 1205 on or about April 1, 2005, to set forth and justify the rates it could charge to subscribers in the City for equipment and installations for the period from July 1, 2005, through June 30, 2006, (hereinafter the "2005 FCC Form 1205"); and

WHEREAS, the 2005 FCC Form 1205 raised many of the same issues the Consultants identified in Comcast's 2004 FCC Form 1205; and

WHEREAS, Comcast and the Consultants have discussed the 2004 Form 1205 Rate Order, the 2004 FCC Form 1205 and the 2005 FCC Form 1205 and have reached a settlement of outstanding issues; and

WHEREAS, Comcast has extended a settlement offer to the City, which embodies Comcast's understandings with the Consultants; and

WHEREAS, the City believes it is in the public interest to eliminate the uncertainty and delay associated with the pending appeal of the 2004 Form 1205 Rate Order; and

WHEREAS, the City believes it is in the public interest to avoid the delay, uncertainty and costs associated with the continued review of the 2005 FCC Form 1205 and to establish certain understandings regarding the 2006 FCC Form 1205; and

WHEREAS, Comcast has proposed settling outstanding issues concerning the 2004 FCC Form 1205, the 2004 Form 1205 Rate Order and the 2005 FCC Form 1205 and establishing certain understandings regarding the 2006 FCC Form 1205; and

WHEREAS, the terms of the settlement agreed to by the parties are attached in a November 4, 2005, letter from Comcast, which letter (including appendices) is attached hereto (the "Settlement Letter").

NOW, THEREFORE, the following is resolved:

1. To the extent that there is "Final Approval" of the Settlement Letter, as that term is defined in the Settlement Letter, or the substantive proposal set forth in the Settlement Letter is otherwise offered to the City in the event there is no Final Approval, the City hereby adopts the Settlement Letter, and approves the settlement terms contained therein. The Settlement Letter is incorporated into this Resolution by reference. The City reserves all of their rights and remedies with respect to issues and calculations not expressly addressed in the Settlement Letter.

2. The 2004 Form 1205 Rate Order is hereby amended by this Resolution and the Settlement Letter, as of the date of Final Approval or such other date as is agreed upon by the City and Comcast, and any provisions of the 2004 Form 1205 Rate Order that are inconsistent with the Settlement Letter and this Resolution are hereby repealed; provided, however, that if there is no Final Approval or other approval of the Settlement Letter and/or the Settlement Letter is rescinded by Comcast at any time, the 2004 Form 1205 Rate Order shall remain in full force and effect, notwithstanding this Resolution.

3. Subject to Final Approval of the Settlement Letter or the individual approval of the Settlement Letter by the City and Comcast, Comcast's 2005 FCC Form 1205 is rejected in its entirety and maximum permitted rates for equipment and installations are hereby set in accordance with the rates calculated in Appendix C of the Settlement Letter. The rates set herein will govern Comcast's equipment and installation rates until Comcast lawfully implements a further rate change pursuant to applicable law. If the Settlement Letter does not receive Final Approval or is not individually approved by the City and Comcast, the 2005 FCC Form 1205 shall not be rejected by operation of this Resolution and the City continues to reserve all of their rights with respect to the 2005 FCC Form 1205.

4. Subject to Final Approval of the Settlement Letter or the individual approval of the Settlement Letter by the City and Comcast, the terms set forth therein regarding the review of Comcast's 2006 FCC Form 1205 shall govern the review of that form by the City.

5. Comcast shall file a refund plan with the City within thirty (30) days of the effective date of this Resolution setting forth the refund amounts for the 2004 FCC Form 1205 and the 2005 FCC Form 1205. The refund plan shall contain information sufficient to permit the City to verify whether Comcast's refunds comply with the requirements of this Resolution, the Settlement Letter, and applicable laws and regulations.

6. Within sixty (60) days of Final Approval, as that term is defined in the Settlement Letter, or such other date as may be agreed upon by Comcast and the City, Comcast shall make all rate reductions and refunds that are necessary based on the 2004 refund amounts identified in the Settlement Letter for the 2004 FCC Form 1205 and on the equipment and installation rates calculated in Appendix C of the Settlement Letter for the 2005 FCC Form 1205. Comcast shall refund all amounts charged to subscribers for equipment or installations that exceed the maximum permitted amounts specified in Appendix C of the Settlement Letter in accordance with 47 C.F.R. § 76.942(d).

7. Comcast shall file with the City within ninety (90) days of Final Approval, as that term is defined in the Settlement Letter, or such other date as may be agreed upon by Comcast and the City, a certification, signed by an authorized representative of Comcast, stating whether Comcast has complied fully with all provisions of this Resolution and the Settlement Letter, describing in detail the measures taken to implement this Resolution and the Settlement Letter, and the total amount of the credits applied to subscribers' bills with respect to the 2004 FCC Form 1205 and the 2005 FCC Form 1205.

8. Comcast may charge rates less than the maximum rates set herein 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.

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

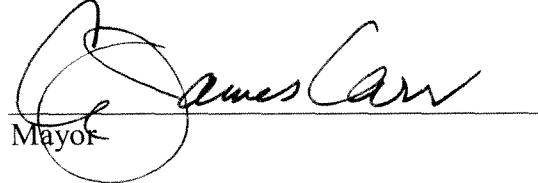
10. This Resolution shall be released to the public and to Comcast, and a public notice shall be published stating that this Resolution has been issued and is available for review, pursuant to 47 C.F.R. § 76.936(b).

11. This Resolution shall be effective immediately upon adoption.

This Resolution is passed, adopted and issued by the City of Wheaton this 12th day of December, 2005.

**CITY OF WHEATON**

By:



James Carr

Mayor

Attest: Emily M. Denney  
City Clerk

Ayes:

Roll Call Vote:

Councilman Mouhelis  
Councilman Suess  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilman Levine

Nays:

None

Absent:

None

Motion Carried Unanimously