

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, NW, SECOND FLOOR, WEST TOWER
WASHINGTON, DC 20005

ORDER

October 21, 2002

FORMAL CASE NO. 1006, IN THE MATTER OF THE COMPLAINT OF
COMCAST CABLEVISION OF THE DISTRICT, L.L.C. V. VERIZON
WASHINGTON, D.C., INC.;

AND

FORMAL CASE NO. 815, IN THE MATTER OF THE INVESTIGATION INTO
THE CONDITIONS FOR CABLE TELEVISION'S USE OF UTILITY POLES IN
THE DISTRICT OF COLUMBIA, Order No. 12573

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") approves Comcast Cablevision of the District, L.L.C.'s July 15, 2002 request to withdraw its Certified Formal Complaint ("Formal Complaint") and closes the instant proceeding.¹ In addition, the Commission denies the Office of the People's Counsel's ("OPC") Request for a Public Interest Hearing on Proposed Negotiated Rate Settlement ("OPC Motion" or "OPC Request").² Because there is no complaint or proposed settlement agreement before us, the Commission cannot act on OPC's Motion. Finally, we direct the parties to file a copy of the new or amended conduit rate agreement for Commission review pursuant to Section 1600.4 of the Pole Attachment Provisions for Cable Television ("Pole Attachment Provisions") in Formal Case No. 815.³

¹ See generally, *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC, Inc.*, Notice of Withdrawal of Complaint ("Comcast DC Withdrawal") and Filing of Status Report on Settlement Conference ("Status Report"), filed by Comcast DC, July 15, 2002.

² *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC, Inc.*, Request for Public Interest Hearing on Proposed Negotiated Rate Settlement, filed by OPC, July 29, 2002 ("OPC Request").

³ 15 DCMR § 1600.4 (1998).

II. BACKGROUND

2. The instant proceeding arises from a Formal Complaint filed by Comcast DC protesting Verizon DC's proposed increase in its conduit rental rate from 64 cents per-duct-foot per year to \$5.50 per-duct-foot per year.⁴ On February 28, 2002, the Commission issued Order No. 12335 to schedule a pre-hearing conference in this matter.⁵ The Commission further directed the parties to submit either joint or individual statements of proposed issues and procedural schedules on or before March 27, 2002.⁶

3. On April 3, 2002, the Commission convened a pre-hearing conference, and OPC, Comcast DC, and Verizon DC appeared to discuss the proposed issues lists and procedural schedules. Following the pre-hearing conference, the Commission issued an Order and Report on Pre-Hearing Conference to adopt a list of issues and procedural schedule.⁷ The Commission also mandated that the parties participate in settlement negotiations on July 12, 2002 and that the parties file a statement on the outcome of the negotiations with the Commission.⁸

4. On July 15, 2002, the Commission postponed the hearing on Comcast DC's Formal Complaint because the Commission staff had received preliminary reports from two of the parties that a full evidentiary hearing might not be necessary.⁹ In addition, the Commission stated that the parties would be advised whether the hearing would be rescheduled after the parties file their joint report on the settlement conference.¹⁰

⁴ *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC, Inc.*, Certified Formal Complaint, filed by Comcast DC, September 21, 2001 ("Comcast DC Complaint").

⁵ *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC Inc.*, Order No. 12335, rel. February 28, 2002.

⁶ *Id.*

⁷ *Id.* at 13.

⁸ *Id.* at 1.

⁹ *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC Inc.*, Order No 12441, rel. July 15, 2002. Attorneys for Comcast DC and Verizon DC have stated that a full evidentiary hearing may not be necessary because of the parties' report on the settlement negotiations.

¹⁰ Order No. 12441 at 2.

III. DISCUSSION

A. Comcast DC's Notice of Withdrawal and Status Report

5. Comcast DC filed a Notice of Withdrawal of Complaint ("withdrawal notice") on July 15, 2002.¹¹ Specifically, Comcast DC states that it has entered into a mutually acceptable agreement on conduit rates with Verizon DC.¹² Comcast DC also asserts that Verizon DC agrees to its withdrawal and that OPC has been notified of its intent to withdraw.¹³ No party filed a response to Comcast DC's withdrawal notice.

6. In addition to the withdrawal notice, Comcast DC filed a Status Report on the settlement conference on behalf of the parties to the proceeding.¹⁴ The parties state that they held a settlement conference on July 12, 2002.¹⁵ The parties also aver that Comcast DC and Verizon DC have resolved the issues in the Complaint.¹⁶ No one filed a response to the parties' Status Report.

B. OPC's Request for Public Hearing

7. On July 29, 2002, OPC filed a Request for a Public Interest Hearing on Proposed Negotiated Rate Settlement pursuant to Section 105.8 of the Commission's Rules of Practice and Procedure.¹⁷ Specifically, OPC requests that the Commission hold a public interest hearing after Verizon DC and Comcast DC's negotiated settlement is presented to the Commission for review and approval.¹⁸ OPC contends that such a hearing would support the Commission's decision as to whether the new conduit rate negotiated between Comcast DC and Verizon DC is just, reasonable, and non-discriminatory.¹⁹ OPC avers that a public hearing will ensure that District consumers will not be required to make up for any shortfall represented by the difference between the current rate and the new negotiated rate.²⁰

¹¹ Comcast DC Withdrawal at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *See generally*, Status Report.

¹⁵ *Id.* at 1.

¹⁶ *Id.*

¹⁷ OPC Request at 1. *See also*, 15 DCMR § 105.8 (1998).

¹⁸ OPC Request at 1.

¹⁹ *Id.*

²⁰ *Id.* at 1-2.

8. Although its request may appear premature, OPC states that it seeks to avoid having the current adjudicated conduit rate abrogated by a new one without the determination of whether the new rate is in the public interest.²¹ OPC contends it is aware that Verizon DC and Comcast DC may have reached a settlement, which must be submitted to the Commission for approval.²² OPC declares that it is concerned Verizon DC and Comcast DC will agree to the withdrawal of the Comcast DC's Formal Complaint in an attempt to remove the negotiated rate from the Commission's review and approval.²³ OPC suggests that if the negotiated rate is not submitted to the Commission for a public interest determination then it cannot be implemented as the new conduit rate.²⁴ Further, OPC avers that the Commission is bound by law to complete this proceeding within 360 days from the date of filing of Comcast DC's Formal Complaint on September 16, 2001.²⁵

9. OPC contends that by law the Commission is required to approve all rate changes.²⁶ In fact, OPC maintains that the Commission is specifically charged with the duty to regulate the rates, terms, and conditions for cable television's use of the utilities' rights-of-way.²⁷ Moreover, OPC asserts settlement agreements must be considered within the context of a public interest hearing.²⁸ OPC contends that the District of Columbia Court of Appeals has ruled that the Commission can only approve a rate change after a reasonableness determination has been made.²⁹ OPC alleges that the only way the Commission can satisfy the reasonableness requirement is to state the criteria governing its rate determination and to explain how the particular rate order applies to the facts of the case.³⁰

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 3. The Commission notes that Comcast DC's Formal Complaint was actually filed on September 21, 2001 instead of the September 16 date that OPC cites. However, OPC is correct that 360-day deadline would be September 16, 2002.

²⁶ *Id.* at 5.

²⁷ *Id.* See also, D.C. Code, 2001 Ed., § 34-1208 and 15 DCMR § 1600 (1998).

²⁸ OPC Request at 5. See also, 15 DCMR § 130.11(1998).

²⁹ OPC Request at 6. See also, *Chesapeake and Potomac Telephone Co. v. Public Service Commission*, 514 A.2d 1159 (D.C. 1986), citing *Washington Public Interest Organization v. Public Service Commission*, 393 A.2d 71 (D.C. 1978).

³⁰ OPC Request at 6.

10. OPC states that neither the Status Report nor Comcast DC's withdrawal indicates if the parties intend to file the new negotiated conduit rate for a determination of the justness and reasonableness of the rate.³¹ OPC avows that the record is unclear with respect to the disposition of the negotiated rate.³² Thus, OPC asserts the Commission cannot discharge its statutory duty until the parties file the terms of the proposed Settlement Agreement.³³ Accordingly, OPC argues that Verizon DC and Comcast DC must file the Settlement Agreement containing the new rate for Commission approval before it becomes effective.³⁴

11. OPC claims its primary objective is to ensure that the telephone rates charged to residential and small business consumers remain just and reasonable.³⁵ OPC maintains that any difference in price from the current approved rate to a lower approved rate should not be borne by District ratepayers.³⁶ Moreover, OPC advises that Section 34-901 of the District of Columbia Code provides that existing rates will continue unless otherwise ordered by the Commission.³⁷ Therefore, OPC requests that the Commission direct the parties to file the Settlement Agreement with the terms and conditions underlying the new negotiated rate.³⁸ Upon the filing of the new rate, OPC avers that the Commission must hold a public hearing to determine whether the new rate is just, reasonable, and nondiscriminatory.³⁹

12. As indicated by OPC, Chapter 16 of the Commission's rules governs its authority over cable television.⁴⁰ OPC avers that Chapter 16 mandates Commission regulatory authority over the rates, terms, and conditions of a cable television provider's use of a District utility's rights-of-way.⁴¹ Further, OPC states the Commission is vested with the authority to ensure that all rates, terms, and conditions prescribed in accordance with Chapter 16 are just and reasonable.⁴² To accomplish the above goals, OPC asserts

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 7.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 8.

⁴¹ *Id.*

⁴² *Id.*

the Commission requires utility companies to file new conduit agreements no later than 14 days after the final execution of the agreement.⁴³ Therefore, OPC requests that the Commission follow Chapter 16's requirements and require the filing of the parties' negotiated rate.⁴⁴

C. Verizon DC and Comcast DC's Joint Opposition to OPC's Request

13. On August 12, 2002, Verizon DC and Comcast DC (collectively "the parties") filed a Joint Opposition to OPC's Request for a Public Interest Hearing on the Proposed Negotiated Rate Settlement ("Joint Opposition").⁴⁵ In support of their Joint Opposition, the parties state they have successfully negotiated a settlement of the matters in dispute and have eliminated the need for further litigation.⁴⁶ The parties argue OPC seeks to prolong litigation by requesting a full hearing on the settlement with post-hearing initial and reply briefs.⁴⁷ If the Commission were to grant OPC's hearing request, the parties contend that there would be a disincentive for resolving matters through negotiated agreements.⁴⁸ Therefore, Verizon DC and Comcast DC ask that the Commission deny OPC's request.⁴⁹

14. As justification for a hearing, the parties contend that OPC erroneously alleges that the settlement may adversely affect consumers.⁵⁰ However, the parties aver OPC's concerns that consumers may have to compensate for any shortfall because of the settlement are misplaced.⁵¹ The parties allege that Verizon DC is subject to the 2002 Price Cap Plan and, therefore, Verizon DC's residential rates are fixed and may be changed only as a result of exogenous costs.⁵² The parties avow that the settlement does

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC, Inc., Joint Opposition of Verizon Washington, DC Inc. and Comcast Cablevision of the District, LLC to the Office of the People's Counsel's Request for a Public Interest Hearing on Proposed Negotiated Rate Settlement, filed by Verizon DC and Comcast DC, August 12, 2002 ("Joint Opposition").*

⁴⁶ Joint Opposition at 1.

⁴⁷ *Id.* at 2.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 5.

⁵⁰ *Id.* at 2.

⁵¹ *Id.*

⁵² *Id.* See also, *Formal Case No. 1005, In the Matter of Verizon Washington, DC, Inc.'s Price Cap Plan 2002 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 12368, rel. April 1, 2002.

not qualify as an exogenous cost.⁵³ Further, the parties avow that the Commission has previously explained, “conduit rental does not fall within the ambit of available [telecommunications] services” of the 2002 Price Cap Plan.⁵⁴

15. The parties aver that, at the federal level, negotiated settlements are the preferred resolutions in pole attachment and conduit matters.⁵⁵ Indeed, Verizon DC and Comcast DC assert that a party seeking relief at the Federal Communications Commission (“FCC”) is required to describe the steps taken to resolve the dispute before filing a complaint.⁵⁶ The parties contend the FCC routinely dismisses complaints once the parties have negotiated a settlement.⁵⁷ Similarly, the parties allege that the Commission requires parties to include a brief summary in the complaint of all steps taken to resolve the problem before filing.⁵⁸ Moreover, the parties state that District law requires the Commission to regulate the rates, terms, and conditions for cable television’s use of the utility’s rights-of-way in accordance with federal law and FCC rules and regulations.⁵⁹

16. Contrary to OPC’s arguments, the parties insist that this matter is not a full settlement of a contested matter, which requires a hearing pursuant to Section 130.11 of the Public Service Commission Rules of Practice and Procedure (“Commission Rules”).⁶⁰ The parties state a contested case is a proceeding “in which the legal rights, duties, or privileges of specific parties are *required* by any law, or by constitutional right, to be determined after a hearing before the Mayor or any agency.”⁶¹ Because Comcast DC withdrew its complaint on July 15, 2002, the parties assert there is no contested case before the Commission.⁶²

⁵³ Joint Opposition at 2.

⁵⁴ *Id.* at 2. See also, *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC, Inc.*, Order No. 12432 at 15, rel. July 3, 2002.

⁵⁵ Joint Opposition at 2. See also, *Implementation of § 703 of the Telecommunications Act of 1996*, 13 FCC Rcd 6777 (1998); *Implementation of the 1996 Telecommunications Act of 1996*, 12 FCC Rcd 22497 (1997); *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd 4387 (1987).

⁵⁶ Joint Opposition at 2, *citing* 47 C.F.R. § 1.1404 (k) (2002).

⁵⁷ Joint Opposition at 2.

⁵⁸ *Id.* at 3, *citing* 15 DCMR § 1602.10 (1998).

⁵⁹ *Id.* at 2 *citing* D.C. Code 2001 Ed., § 34-1208.

⁶⁰ *Id.* at 3, *citing* 15 DCMR § 1301.11 (1998).

⁶¹ *Id.* at 3, *citing* D.C. Code 2001 Ed., § 2-502 (8) [emphasis in original]

⁶² Joint Opposition at 3.

17. According to the parties, OPC wrongly argues that the Commission is bound to approve any settlement involving conduit rates under Sections 34-911 and 34-1208 of the District of Columbia Code.⁶³ Verizon DC and Comcast DC assert Section 34-911 authorizes the Commission to engage in ratemaking.⁶⁴ The parties state that no rate base application has been filed.⁶⁵ The parties contend that no settlement agreement has been submitted to the Commission because the parties have settled on a conduit rate; however, no accord has been reached on the terms and conditions for access to Verizon DC's conduit.⁶⁶ The parties further argue that neither Section 34-911 nor the applicable Court of Appeals cases interpreting the section require Commission approval of a settlement involving conduit rates.⁶⁷

18. Finally, Verizon DC and Comcast DC insist OPC is incorrect that the Commission must decide its motion within 360 days from September 16, 2001.⁶⁸ The parties argue that OPC's reliance on the 360-day deadline pursuant to Section 1608.1 of the Commission's Rules is misplaced.⁶⁹ The parties assert that the above rule implements the Telecommunications Act of 1996's requirement that *complaints* involving conduit rates be resolved within 360 days from the date of filing.⁷⁰ Because Comcast DC withdrew its Formal Complaint on July 15, 2002, the parties argue that there is no complaint pending before the Commission.⁷¹ Consequently, the parties state the 360-day deadline is inapplicable.⁷²

D. Supplement to OPC's Request for a Public Interest Hearing⁷³

19. On September 13, 2002, OPC filed a Supplement to OPC's Request for a Public Interest Hearing Concerning Proposed Negotiated Rate Settlement ("Amended

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Joint Opposition at 3, *see n.* 7.

⁶⁶ *Id.*

⁶⁷ Joint Opposition at 3.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* citing 47 USC § 224 (c) (2002). [emphasis in original]

⁷¹ Joint Opposition at 4.

⁷² *Id.*

⁷³ For purposes of judicial economy and administrative convenience, the Commission will not repeat arguments and allegations raised in OPC's initial Request for Public Interest Hearing.

Request”).⁷⁴ OPC states that the parties have announced in their Joint Opposition that they will not file their proposed settlement.⁷⁵ OPC also contends that the parties assert the Commission lacks jurisdiction due to Comcast DC’s withdrawal of its complaint.⁷⁶ Given the parties refusal to file the settlement, OPC asks that the Commission compel them to submit the settlement agreement and conduct a hearing pursuant to Section 34-1208 of the District of Columbia Code.⁷⁷

20. OPC avers withdrawal of Comcast DC’s complaint is a procedural question separate and distinct from Comcast DC and Verizon DC’s legal obligation to file their settlement.⁷⁸ By attempting to withdraw the complaint and refusing to file a settlement, OPC states the parties are trying to regulate conduit rental rates in the District of Columbia.⁷⁹ OPC contends the Commission’s statutory authority over conduit rental rates is independent of Comcast DC’s Formal Complaint.⁸⁰ Therefore, OPC asserts that the Commission should not permit the parties to alter the existing rental rate and should uphold its statutory duty by requiring the parties to file their settlement agreement.⁸¹ In the alternative, OPC argues the Commission could issue an order declaring that there has been no legal change in the conduit rental rate. Further, OPC requests that the Commission issue an order containing a reservation of jurisdiction such as the Commission normally issues in cases approving withdrawals of applications.⁸²

E. Joint Opposition of Verizon DC and Comcast DC to OPC’s Supplemental Request

21. On September 25, 2002, Verizon DC and Comcast DC filed a Joint Opposition to Supplement of OPC’s Request for a Public Interest Hearing on Proposed Negotiated Rate Settlement (“Supplement Opposition”).⁸³ Specifically, Verizon DC and

⁷⁴ *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC, Inc.*, Supplement to OPC’s Request for a Public Interest Hearing Concerning Proposed Negotiated Rate Settlement, filed by OPC, filed on September 13, 2002 (“OPC Amended Request”).

⁷⁵ OPC Amended Request at 1.

⁷⁶ *Id.*

⁷⁷ *Id.* at 8.

⁷⁸ *Id.* at 6.

⁷⁹ *Id.* at 5.

⁸⁰ *Id.* at 6.

⁸¹ *Id.* at 6.

⁸² *Id.* at 8.

⁸³ *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC, Inc.*, Joint Opposition of Verizon Washington, DC Inc. and Comcast

Comcast DC aver that OPC's Amended Request fails to provide any additional support for its requested relief.⁸⁴ The parties allege that from the outset of this proceeding the Commission has encouraged Verizon DC and Comcast DC to resolve their dispute over conduit rental rates.⁸⁵ Verizon DC and Comcast DC contend they have heeded the Commission's requests and have settled the dispute.⁸⁶ Yet, the parties insist that OPC now wrongly alleges that the Commission's jurisdiction over conduit rental rates has been usurped.⁸⁷

22. The parties aver they are not trying to evade the Commission's authority.⁸⁸ Instead, the parties contend that the settlement was an attempt to avoid unnecessary and possibly protracted hearings on a matter that does not affect consumers.⁸⁹ The parties state these claims are routinely settled privately before the FCC.⁹⁰ Furthermore, the parties allege a hearing is not required under District law.⁹¹ While these arguments were set forth at length in their Joint Opposition, the parties avow that OPC has filed a supplement that does not raise any new arguments.⁹² The parties allege OPC's new filing even recognizes that a hearing is not required on the parties' settlement.⁹³ Verizon DC and Comcast DC assert that at no time did they dispute the Commission's authority to regulate pole and conduit matters.⁹⁴

23. Contrary to OPC's allegations, the parties claim that Comcast DC's letter withdrawing its complaint was not procedurally improper or in anyway intended to be

Cablevision of the District, LLC to Supplement of OPC's Request for a Public Interest Hearing Concerning Proposed Negotiated Rate Settlement, filed by Verizon DC and Comcast DC, filed September 25, 2002 ("Supplement Joint Opposition").

⁸⁴ Supplement Joint Opposition at 1.

⁸⁵ *Id.* citing Pre-hearing Conference Transcript at 4.

⁸⁶ Supplement Joint Opposition at 1.

⁸⁷ *Id.* at 2.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* See also, *Chronicle Publishing Co. d/b/a Chronicle Cablevision of Hawaii et al v. GTE Hawaiian Telephone Co., Inc.*, 10 FCC Rcd 1995; *Cable Television Assoc. of GA v. BellSouth Telecommunications, Inc.*, 10 FCC Rcd. 3961 (1995).

⁹¹ Supplement Joint Opposition at 2.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 3.

disrespectful.⁹⁵ The parties aver that the Commission's regulations do not prescribe the method by which a party may withdraw its complaint.⁹⁶ The parties state the FCC permits a party to withdraw a complaint by simple notice.⁹⁷ In contrast, the parties contend that under the Commission's rules OPC should have sought leave to file its Amended Request but has failed to do so.⁹⁸

24. The parties state that it is not entirely clear whose interests OPC seeks to protect through its actions in this proceeding.⁹⁹ As maintained by the parties, Comcast DC is satisfied with the resolution of the issues raised in its Formal Complaint and Verizon DC has negotiated a resolution in accordance with its business need.¹⁰⁰ The parties allege that District consumers will not be impacted by the negotiated conduit rate.¹⁰¹ The parties contend the Commission should permit them to settle this matter without holding unnecessary hearings.¹⁰² Accordingly, the parties request that the Commission use its discretionary powers and close the instant proceeding.¹⁰³

F. Commission Decision

Comcast DC's Request to Withdraw and Closing of Formal Case No. 1006

25. Upon consideration of Comcast DC's request to withdraw its Formal Complaint, the Commission determines that it should be granted. While the Commission's statutes and regulations do not establish a procedure for withdrawing complaints, Section 34-1208 and Section 1602 of Pole Attachment Provisions mandate

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* See, e.g. *In the Matter of Charter Communications, Inc. v. Union Electric Co. d/b/a AmerenUE*, 16 FCC Rcd. 13819 (July 10, 2001) (termination pole attachment complaint based upon notice of dismissal that the parties have reached a settlement).

⁹⁸ Supplement Joint Opposition at 3 *citing* 15 DCMR §§ 1600.6 and 1606.1 (1998).

⁹⁹ Supplement Joint Opposition at 3.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 4.

regulation of the rates, terms, and conditions for the use of existing rights-of-way in accordance with federal law and FCC rules and regulations.¹⁰⁴ Because the FCC permits withdrawal of complaints by notice, we do not consider Comcast DC's letter procedurally improper or defective.¹⁰⁵

26. Likewise, the Commission does not believe that allowing Comcast DC to withdraw its complaint will prejudice any other party to the proceeding. The Commission's regulations allow the cable television franchise, franchisee, or utility company to bring a complaint.¹⁰⁶ In this instance, the Complainant cable television company seeks to withdraw its complaint with the approval of the Respondent utility company.¹⁰⁷ OPC has not alleged that Comcast DC does not have the legal right to withdraw its complaint.¹⁰⁸ Moreover, OPC has continually asserted that its participation in the proceeding was limited to ensuring just and reasonable telephone rates for District ratepayers.¹⁰⁹ Based on the record before us, the Commission does not believe that approval of Comcast DC's withdrawal modifies telephone rates for ratepayers in the District. Consequently, Comcast DC should be allowed to withdraw its Formal Complaint.

27. OPC seems to link the requirement that conduit rate agreements must be filed pursuant to the Commission's Pole Attachment regulations with the requirement that settlements must be approved pursuant to public interest hearings.¹¹⁰ These regulations are not linked. The language requiring the filing of settlements in the Commission's Rules is permissive because parties are not required to file a settlement.¹¹¹ If parties do not file a settlement and a complaint is withdrawn, they are bound by the terms of the pre-existing conduit agreement. Conversely, Section 1600.4 of the Commission's Rules mandates the filing of conduit agreements for our review and approval.¹¹² Comcast DC and Verizon DC did not file a settlement or an agreement.

¹⁰⁴ See generally, D.C. Code, 2001 Ed. § 34-1208 and 15 DCMR § 1600 (1998).

¹⁰⁵ See *supra* n. 97.

¹⁰⁶ 15 DCMR § 1602.2 (1998).

¹⁰⁷ Comcast DC Withdrawal at 1.

¹⁰⁸ See generally, OPC Request and OPC Amended Request.

¹⁰⁹ (OPC stated that its participation was limited to ensuring that, "the telephone rates charged to residential and small business consumers remain just and reasonable.") *Formal Case No. 1006, In the Matter of the Complaint of Comcast Cablevision of the District, L.L.C., v. Verizon Washington, DC, Inc.*, Response of the Office of the People's Counsel to Verizon DC's Motion to Dismiss and Stay of the Proceeding, filed June 10, 2002.

¹¹⁰ See 15 DCMR §§ 130.11 and 1600.4 (1998).

¹¹¹ 15 DCMR § 1301.10 (1998) (states that [s]ettlements may be filed at any time prior to the issuance of a final decision.)

¹¹² 15 DCMR § 1600.4 (1998).

Comcast DC filed a Notice of Withdrawal.¹¹³ Thus, the Commission need not require Comcast DC and Verizon DC to continue litigation to retain our jurisdiction over their conduit agreement. District law mandates Commission authority over any conduit rate agreement entered into by the parties.¹¹⁴ Therefore, settlement of the complaint by the parties does not alter the Commission's authority over their conduit rate agreement.

28 The Commission opened Formal Case No. 1006 to investigate a Formal Complaint filed by Comcast DC protesting Verizon DC's proposed increase in its conduit rental rate from 64 cents per-duct-foot per year to \$5.50 per-duct-foot per year.¹¹⁵ Because the Commission has decided above to approve Comcast DC's request to withdraw its complaint, there is no reason to keep Formal Case No. 1006 open. Therefore, we hereby close the instant proceeding.

OPC's Request for a Public Interest Hearing

29. After carefully considering OPC's and the parties' comments and replies on this issue, the Commission denies OPC's public interest hearing request. As stated previously, Comcast DC filed its withdrawal on July 15, 2002; however, the company did not include a proposed negotiated conduit settlement or a proposed conduit agreement.¹¹⁶ Likewise, the Status Report filed by OPC and the parties did not include a proposed negotiated rate settlement or proposed conduit agreement.¹¹⁷ Therefore, there is nothing before the Commission, which requires a hearing or further adjudication.

Parties' Must File New or Amended Conduit Agreement

30. As stated previously, the Commission has jurisdiction to establish rates, terms, and conditions for cable television's use of the utility's existing rights-of-way.¹¹⁸ This jurisdiction includes approving, reviewing, and modifying agreements between the cable company and the regulated utility.¹¹⁹ Although Comcast DC and Verizon DC state in their Joint Opposition and Supplemental Joint Opposition that they have settled the

¹¹³ Comcast DC Withdrawal at 1.

¹¹⁴ *See supra* n. 104.

¹¹⁵ Comcast DC Complaint at 2.

¹¹⁶ *See generally*, Status Report.

¹¹⁷ *Id.*

¹¹⁸ *See generally*, D.C. Code, 2001 Ed. § 34-1208 and 15 DCMR § 1600(1998).

¹¹⁹ 15 DCMR §§1600.6 and 1606.1 (1998).

dispute, they did not indicate whether they have executed a new or amended conduit rental agreement.¹²⁰ If the parties have executed a new or amended agreement, they must file this agreement pursuant to Section 1600.4 of the Pole Attachment Provisions in Formal Case No. 815.¹²¹

THEREFORE, IT IS HEREBY ORDERED THAT:

31. Comcast DC's request to withdraw its Formal Complaint is **GRANTED**;
32. OPC's Request for a Public Interest Hearing on the Proposed Negotiated Rate Settlement is **DENIED**;
33. Comcast DC and Verizon DC must file their new or amended conduit rate agreement in Formal Case No. 815 if one has been executed; and
34. The instant proceeding is **CLOSED**.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK


SANFORD M. SPEIGHT
ACTING COMMISSION SECRETARY

¹²⁰ See generally, Joint Opposition and Supplement Opposition.

¹²¹ 16 DCMR § 1600.4 (1998).