



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-5

March 13, 2014

Petition of Comcast Cable Communications, LLC to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Comcast Cable Communications, LLC that are currently subject to rate regulation.

RATE ORDER

APPEARANCES:

PETITIONER

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I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves the petition of Comcast Cable Communications, LLC (“Comcast” or “Company”), in which Comcast seeks to establish basic service tier (“BST”) maximum permitted rates (“MPR”), and equipment and installation rates for its 128 regulated Massachusetts communities. A list of the regulated Massachusetts communities served by Comcast can be found in the Rate Schedule attached as Attachment 1.

II. PROCEDURAL HISTORY

On March 29, 2013, Comcast filed Federal Communications Commission (“FCC”) Forms 1240 with the Department in which Comcast proposed BST MPRs for each of its regulated Massachusetts communities. *Pet. of Comcast Cable Commc’ns., LLC to Establish & Adjust the Basic Serv. Tier Programming, Equip., & Installation Rates for the Cmtys. in Mass. Served by Comcast Cable Commc’ns., LLC that are Currently Subject to Rate Regulation* (“Comcast Rate Setting Petition”), D.T.C. 13-5 (“Docket”) at 1. Comcast also filed a nationwide FCC Form 1205 in which the Company proposed equipment and installation MPRs for all of its regulated Massachusetts communities. *Id.* Pursuant to FCC regulations, Comcast’s proposed BST programming, equipment, and installation rates became effective on July 1, 2013.

47 C.F.R. § 76.933(g).

On May 14, 2013, the Department issued a Notice of Public Hearing, Order of Notice, and Letter Notice to Issuing Authorities. Docket at 1. On May 31, 2013, the Town of Weymouth submitted a petition to intervene in the rate proceeding, which the Department approved on June 24, 2013. *Id.* On June 5, 2013, the Town of Dighton petitioned to intervene in the rate proceeding, which the Department approved on July 9, 2013. *Id.* On July 16, 2013, the

Town of Dighton submitted a letter to the Department.¹ *Id.* The Department issued its First Set of Information Requests on August 26, 2013. Docket at 1. Comcast filed its responses with a motion for confidential treatment on September 12, 2013. *Id.* at 2. Comcast filed a supplement to its responses on September 13, 2013. *Id.* On September 20, 2013, the Department received a petition to intervene from the Town of Somerset, which the Department granted on October 2, 2013. *Id.* On October 9, 2013, the Town of Weymouth submitted written comments to the Department. *Id.* Comcast filed its Proof of Notice of Hearing on October 11, 2013. Docket at 2.

On October 16, 2013, the Department held public and evidentiary hearings. At the public hearing, the Department received public comment from the City of Peabody. Hearing Transcript (“Tr.”) at 27-28, Oct. 16, 2013. The Department also entered a letter from the City of Lowell as written public comment. *Id.* at 7. During the evidentiary hearing, the Department issued 15 record requests on behalf of the Department, two record requests for the Town of Weymouth, and four record requests for the Town of Somerset. *Id.* at 14, 21-24, 29, 35-38, 43, 50, 52-54, 58, 63-64, 68-69. Comcast submitted its responses on November 14, 2014 with a supplemental motion for confidential treatment. Docket at 2. The Department granted Comcast’s motion for confidential treatment on February 14, 2014. *Id.*

The evidentiary record consists of 130 exhibits from Comcast, one exhibit from the Town of Weymouth, one exhibit from the Town of Dighton, 12 responses to Department Information Requests, the transcripts to the public and evidentiary hearings, 15 responses to Department Record Requests, two responses to Town of Weymouth Record Requests, and four responses to Town of Somerset Record Requests.²

¹ In its letter, the Town of Dighton stated, “it trusts the Department will consider any Comcast service proposals in light of the best interest of Comcast’s customers in the Town of Dighton.”

² Citations to Comcast’s FCC Forms 1240 and 1205 are to “Ex. Comcast-1,” *et seq.* Citations to Comcast’s FCC Forms 1240 and 1205 as amended are to the attachment included with Comcast’s revision submitted

III. ANALYSIS AND FINDINGS

After review and consideration, the Department approves Comcast's FCC Forms 1240 and Form 1205 and finds the proposed rates to be reasonable in accordance with and subject to the Department's findings below.

A. Comcast's FCC Forms 1240

A cable operator must calculate its rates upon specific FCC-created forms incorporating the provisions of its rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. A cable operator is allowed to update annually its BST programming rates to account for inflation; changes in the number of regulated channels; and changes in external costs, including programming costs, copyright costs, and franchise related costs ("FRCs"). 47 C.F.R. § 76.922(e). To adjust the rates on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that its projections are reasonably certain and reasonably quantifiable. *See* 47 C.F.R. §§ 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fee costs, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRCs to the extent they are reasonably certain and reasonably quantifiable. *Id.* FRC projections, however, are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

in response to Information Requests, *e.g.*, "IR 1-1, Attachment 1-1." Citations to the Information Requests issues and Comcast's responses are to "IR 1-1," *et seq.* Citations to the evidentiary transcript are to Tr. at [page number]. Citations to the Department's Record Requests and Comcast's Responses are to "RR-1," *et seq.* Citations to the Town of Weymouth's Record Requests and Comcast's Responses are to "WRR-1," *et seq.* Citations to the Town of Somerset's Record Requests and Comcast's Responses are to "SRR-1," *et seq.*

The Department reviews rate adjustments on an FCC Form 1240 pursuant to the FCC's rate regulations. *See* 47 C.F.R. § 76.922(a). Specifically, the FCC directs local rate regulators, such as the Department, to ensure that the approved rates are in compliance with the Communications Act of 1934, as amended ("Communications Act"), and do not exceed the maximum permitted charges calculated using the FCC's rate forms. *Id.* The Department may accept, as compliant with the statute, BST rates that do not exceed the approved maximum permitted charge as determined by federal regulations. *See* 47 C.F.R. §§ 76.922(a), 76.922(c). In addition, the Department shall approve only those rates that it deems reasonable. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15. The cable operator has the burden of proving that its proposed BST programming rates comply with Section 623 of the Communications Act, and implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator); *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation, Report & Order & Further Notice of Proposed Rulemaking*, 8 F.C.C.R. 5631, at 5716, ¶ 128 (May 3, 1993) ("*FCC Rate Order*").

The Department determines that all of Comcast's FCC Forms 1240, as amended, comply with federal and state laws and regulations and that the proposed rates are reasonable.

1. Subscribers Count for the Projected Period

To estimate the subscribers count for the projected period on the FCC Forms 1240, Comcast typically uses the average subscribers count from the true-up period. IR 1-11. For this rate calculation period, Comcast moved its filing date resulting in a 14-month true-up period. Tr. at 45. On an FCC Form 1240, true-up periods, to the extent possible, are broken up into periods that are 12 months in length. *Instructions for FCC Form 1240 Annual Updating of Maximum*

Permitted Rates for Regulated Cable Services (“FCC Form 1240 Instructions”) at 4 (July 1996).

Comcast’s FCC Forms 1240, thus, contained two true-up periods. IR 1-11. Upon its review Comcast’s FCC Forms 1240, the Department inquired into Comcast varying its estimated subscribers count, with some of the Company’s FCC Forms 1240 relying on the average subscribers count for true-up period 1 and on other FCC Forms 1240 relying on average subscribers count for true-up period 2. IR 1-11; Tr. at 45-46.

Comcast explained that in order to determine whether true-up period 1 or true-up period 2 provided a better estimate for its subscribers count, it calculated the difference between the first month of the true-up period and the last month. IR 1-11. If the average subscribers count in a community³ decreased by a difference of nine percent or greater, Comcast assumed the subscribers count for that community would have a lower subscriber count in the projected period and used the average subscribers count for true-up period 2, the more recent subscriber count, rather than the average subscriber count for true-up period 1. IR 1-11; Tr. at 45. The Department finds that Comcast’s methodology for estimating subscriber count for the projected period is permissible under the federal regulations (47 C.F.R. 76.922) and in accord with the FCC Form 1240 Instructions. *See* FCC Form 1240 Instructions at 5, 9.

2. Amended FCC Forms 1240 for Seven Communities

Comcast, in researching its response to IR 1-8⁴, identified seven communities in which it needed to adjust the reported retransmission consent fees. IR 1-8. Comcast explained that the adjustments were needed due to a mathematical error and not changes in the per subscriber costs

³ Comcast excluded seasonal communities from the calculation as those communities experience fluctuations in subscribers that are time of year based and would not reflect a potential trend in decreasing subscribers. Tr. at 45-46.

⁴ In IR 1-8, the Department requested that Comcast “Provide complete and detailed documentation supporting the costs for retransmission cost fees including in both the true-up period and projected period on the FCC Forms 1240 for each regulated Massachusetts franchise.” IR 1-8.

as originally filed. *Id.* During the evidentiary hearing, Comcast further explained that the mistake arose in a spreadsheet where a formula was not summed correctly. Tr. at 65. The Department finds that Comcast's FCC Forms 1240, as amended, for the communities of Avon, Lakeville, Leominster, Phillipston, Templeton, Wayland, and West Bridgewater reflect the appropriate costs for the retransmission consent fees and accepts the FCC Forms 1240, as amended.

B. Review of FCC Form 1205

The Department finds that Comcast's FCC Form 1205, as amended, was prepared in compliance with federal laws and regulations. FCC Form 1205 calculates rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation* ("FCC Form 1205 Instructions"), at 1 (June 1996). A cable operator annually prepares its FCC Form 1205 using information from its previous fiscal year. In its FCC Form 1205 filing, Comcast proposed adjusting its operator selected rates for equipment and installations. *See Ex. Comcast-130; IR 1-1, Attachment 1-1. FCC Form 1205 Instructions* at 2-3. In this proceeding, Comcast's FCC Form 1205 is for the fiscal year ending December 31, 2012. *See Ex. Comcast-130; IR 1-1, Attachment 1-1.*

In accordance with the FCC's regulatory requirements, subscriber charges established by FCC Form 1205 may not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2). The cable operator has the burden to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act and its implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator); *FCC Rate Order* at 5716, ¶ 128. The Department determines that

Comcast's FCC Form 1205, as amended, has been prepared in compliance with federal laws and regulations, and that the proposed rates are reasonable.

1. Outside Drops

The Department has previously determined that it is inappropriate for Comcast to include the time element associated with the outside drop in the average installation time for an unwired installation as the Company already capitalizes the cost associated with the drop portion of the installation. *See, e.g., Comcast Rate Setting Petition, D.T.C. 12-2, Rate Order at 13-15 (Jan. 30, 2013); Comcast Rate Setting Petition, D.T.C. 10-8, Rate Order at 7-8 (Jan. 27, 2012); Comcast Rate Setting Petition, D.T.C. 09-6, Rate Order at 10-11 (Oct. 29, 2010); Comcast Rate Setting Petition, D.T.C. 08-6, Rate Order at 6 (Oct. 30, 2009); Comcast Rate Setting Petition, C.T.V./D.T.C. 06-3, Rate Order at 3-5 (Oct. 19, 2007); Comcast Rate Setting Petition, C.T.V. 04-3/04-4, Rate Order at 34-36 (Aug. 30, 2005).* Comcast submitted a FCC Form 1205 in this proceeding that includes capitalized subscriber drops in the average unwired installation rates. Ex. Comcast-130. A cable operator may capitalize subscriber drop labor costs *or* include these costs in its installation rates. *See* FCC Form 1205 at 7. Comcast's initial filing did both. *See* Ex. Comcast-130. The Department issued an information request addressing this improper calculation, and on September 11, 2013, Comcast submitted a revised filing that removed the subscriber drops from its calculations. *See* IR 1-1, Attachment 1-1.

The Company's revised FCC Form 1205 excluded the time element associated with subscriber drops in the same manner as costs were excluded on prior Comcast FCC Forms 1205 approved by the Department. *Id.* Accordingly, the average hours per unwired home installation decreased from 1.2992 hours to 1.0892 hours. *Compare* Ex. Comcast-130 with IR 1-1, Attachment 1-1. Because of this decrease in labor hours, the MPR for an unwired home

installation decreased from \$43.17 to \$36.17. *Compare* Ex. Comcast-130 with IR 1-1, Attachment 1-1. Comcast's OSR for unwired installation, however, is \$32.00, which is lower than the revised MPR of \$36.17 for unwired home installation. *See e.g.* IR 1-5, Attachment 1-5. Because the OSR is below the revised MPR, Comcast has not charged customers a rate above the maximum permitted. Accordingly, no refund to customers is required.

2. Commissions

The Department has also previously determined that commissions are a marketing expense that should not be included in the FCC Form 1205 Schedule B operating costs. *See, e.g., Comcast Rate Setting Petition, D.T.C. 12-2, Rate Order at 13-15 (Jan. 30, 2013); Comcast Rate Setting Petition, D.T.C. 10-8, Rate Order at 7-8 (Jan. 27, 2012); Comcast Rate Setting Petition, D.T.C. 09-6, Rate Order at 10-11 (Oct. 29, 2010); Comcast Rate Setting Petition, D.T.C. 08-6, Rate Order at 6 (Oct. 30, 2009); Comcast Rate Setting Petition, C.T.V./D.T.C. 06-3, Rate Order at 3-5 (Oct. 19, 2007); Comcast Rate Setting Petition, C.T.V. 04-3/04-4, Rate Order at 36-37 (Aug. 30, 2005).* Comcast initially submitted a FCC Form 1205 that included sales commissions expenses. *See* Ex. Comcast-130. On September 11, 2013, in response to the Department's information request, Comcast submitted an amended FCC Form 1205 removing sales commissions from its calculations. *See* IR 1-1, Attachment 1-1. The revised FCC Form 1205 removes costs associated with sales commissions by reducing the percentage of overall operating costs included in the regulated portion. *Compare* Ex. Comcast 1-30 with IR 1-1, Attachment 1-1. This adjustment reduces the hourly service charge ("HSC") from \$33.23 to \$33.21. *Id.* The revised FCC Form 1205 also reflects a slight decrease in other MPRs for installations, which were reduced by a range from \$0.01 to \$0.02. *Compare* Ex. Comcast-130

with IR 1-1, Attachment 1-1. The Department finds that Comcast in its FCC Form 1205, as amended, has properly removed commission expenses from its regulated rate calculations.

3. Maintenance Costs and Hours

Comcast's FCC Form 1205 reflects a reduction in the Customer Equipment and Installation Percentage on the Worksheet for Calculating Permitted Equipment and Installation Charges over the prior year's FCC Form 1205. *See* Comcast 1-30; IR 1-1, Attachment 1-1. Schedule C of Comcast's FCC Form 1205 also reflects a reduction in the total number of Maintenance/Service Hours for Digital Transport Adaptor ("DTA") units to 3.1 million over the prior year's FCC Form 1205 total of 3.8 million, despite an increase in Total Number of Units in Service from 16.9 million on the prior year's FCC Form 1205 to 25.7 million on the current year's FCC Form 1205. *See* Comcast 1-30; IR 1-1, Attachment 1-1. A change in the number of repair hours affects the monthly lease rate for customer equipment, as well as, the HSC that is used to calculate installation rates. *See FCC Form 1205 Instructions* at 2; Comcast 1-30; IR 1-1, Attachment 1-1. In response to Department information and record requests, Comcast explained that maintenance costs have decreased due to the increased deployment and use of DTA units. IR 1-2(a). DTA maintenance costs have decreased because Comcast does not repair DTA unit that are out of the one-year warranty. IR 1-3; RR-4. The Department finds that the limited repair period for DTA units substantiates the reduction of total number of Maintenance/Service Hours for DTA units despite the increase in the number of DTA units in service.

4. Conclusion

The Department finds that Comcast has properly removed the time element associated with subscriber drops in the same manner as on prior Comcast FCC Forms 1205 approved by the Department. *See* IR 1-1, Attachment 1-1. The Department also finds that Comcast has properly

removed commission expenses from its regulated rate calculations. *See* IR 1-1, Attachment 1-1. Lastly, the Department finds that Comcast has substantiated the reduction in Maintenance/Service Hours for DTA units despite the increase in the number of DTA units in service. Accordingly, the Department finds that Comcast's FCC Form 1205, as amended on September 11, 2013, was prepared in accordance with FCC regulations and that Comcast's proposed rates are reasonable. *See* Attachment 1.

IV. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That Comcast's FCC Forms 1240 for its 128 regulated communities, as filed on March 28, 2013, and amended on September 12, 2013, are approved; and it is

FURTHER ORDERED: That Comcast's FCC Form 1205, as amended on September 11, 2013, is approved.

By Order of the Department

/s/ Geoffrey G. Why
Geoffrey G. Why, Commissioner

RIGHT OF APPEAL

Pursuant to G. L. c. 25, § 5 and G. L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.