



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

D.T.C. 14-1

November 26, 2014

Petition of CoxCom, Inc. d/b/a Cox Communications to establish and adjust the basic service tier programming, equipment, and installation rates for the Town of Holland

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RATE ORDER

APPEARANCE:

Alan D. Mandl, Esq.  
Law Office of Alan D. Mandl  
90 Glezen Lane  
Wayland, MA 01778

FOR: COXCOM, INC. d/b/a COX COMMUNICATIONS  
Petitioner

## I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves the Maximum Permitted Rates (“MPR”) and Operator Selected Rates (“OSR”) proposed by CoxCom, Inc. d/b/a Cox Communications (“Cox” or “Company”) on January 27, 2014, for installation, equipment, and basic service tier (“BST”) programming in the Town of Holland, Massachusetts. Further, the Department approves the proposed rates submitted on November 13, 2014, for new BST equipment, called a digital transport adapter (“DTA”) being introduced by Cox in anticipation of its digital transition and encryption of its BST channels.

## II. PROCEDURAL HISTORY

Cox filed its Federal Communications Commission (“FCC”) Forms 1240 and 1205 with the Department on January 27, 2014, proposing to establish the MPRs and the Company’s OSRs for equipment, installation, and BST programming.<sup>1</sup> *See* Exs. 1, 2, 3. In its Form 1240, Cox proposed an increased MPR for the monthly BST programming rate charged to Holland subscribers. *Compare Pet. of CoxCom, Inc. d/b/a Cox Commc’ns to establish and adjust the basic serv. tier programming, equip., & installation rates for the Town of Holland, D.T.C. 13-3, Rate Order* at Attachment A (Oct. 7, 2013) (“D.T.C. 13-3 Order, Attach. A”), *with* Exs. 2, 3. Cox proposed to leave unchanged its OSR for its monthly BST programming rate. Exs. 2, 3. Pursuant to FCC regulations, Cox’s proposed BST programming, equipment, and installation rates became effective on May 1, 2014. *See* 47 C.F.R. § 76.933(g); Ex. 3.

In its Form 1205, Cox proposed an increase to the MPRs for each of its installation rates, as well as rates involving change of service home visits and other service visits. *Compare D.T.C. 13-3 Order, Attach. A, with* Exs. 1, 3. Cox proposed to retain its OSRs for equipment

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<sup>1</sup> Citations to Cox’s FCC Form 1205 filed on January 27, 2014, are to “Ex. 1.” Citations to Cox’s revised FCC Form 1205 filed on October 2, 2014, are to “Section 76.923(o) Filing” (discussed *infra* at page 2). Citations to Cox’s further revised FCC Form 1205 filed on November 14, 2014, are to “Supp. Filing.” Citations to Cox’s FCC Form 1240 are to “Ex. 2.” Citations to Cox’s Proposed Rate Structure for effect on May 1, 2014, are to “Ex. 3.”

and installation where those rates were at or below the MPRs. *Compare* D.T.C. 13-3 *Order*, Attach. A, *with* Exs. 1, 3. In addition, Cox proposed to decrease its OSRs for digital and HD/DVR receivers in coordination with its proposed decrease in the MPRs for those types of equipment. Exs. 1, 3.

On July 9, 2014, the Department issued its Notice of Public Hearing and an accompanying Order of Notice. The Department held a public and evidentiary hearing on Cox's proposed rates on August 12, 2014. Cox filed its responses to the Department's record requests ("Record Requests") on September 5, 2014.<sup>2</sup>

On October 2, 2014, Cox notified the Department of its intent to transition to an all-digital format and encrypt its BST channels. *See* Letter from Amy Horan, Government Relations Manager, Cox Communications, Northeast Region, to Catrice Williams, Department Secretary, dated September 24, 2014 ("Horan Letter"), at 1; Revised Form 1205 filing submitted pursuant to 47 C.F.R. § 76.923(o), with a cover letter dated September 30, 2014 ("Section 76.923(o) Filing"), at 1.<sup>3</sup> Through both filings, Cox stated that basic-only subscribers would require DTAs in order to receive cable programming after the digital transition, and that certain customers would be assessed a monthly recurring rate of \$1.99 per DTA. *See* Horan Letter at 1; Section 76.923(o) Filing, Cover Letter at 1. Cox proposed that the new DTA rate would become effective on December 1, 2014, and did not propose changes to its other equipment and installation rates submitted on January 27, 2014. *See* Section 76.923(o) Filing, Cover Letter at 2; 47 C.F.R. § 923(o).

On October 22, 2014, the Department issued information requests in response to Cox's October 2 filings ("Information Requests"). Cox filed its responses to the Information Requests

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<sup>2</sup> On September 5, 2014, Cox also submitted a Motion for Protective Order regarding channel-specific programming cost information provided during the August 12 evidentiary hearing. The Department will address this request in a separate Order.

<sup>3</sup> The Hearing Officer reopened the record on October 22, 2014, in order to incorporate new information relating to Cox's October 2 filings. *See* Hearing Officer Ruling at 1-2.

on October 31, 2014.<sup>4</sup> On November 13, 2014, Cox submitted a Supplemental Filing to the Information Requests, further revising its Form 1205 to reduce the proposed monthly recurring DTA rate to \$1.79.

The evidentiary record consists of seven exhibits, the transcript to the public and evidentiary hearing, four responses to the Department's Record Requests, the Hearing Officer Ruling that reopened the record, the Horan Letter, the Section 76.923(o) Filing, five responses to the Information Requests, and Cox's Supplemental Filing to the Information Requests.<sup>5</sup>

### III. ANALYSIS AND FINDINGS

Based on its review of Cox's Forms 1240 and 1205, as well as Cox's responses to the Department's inquiries, the Department approves the MPRs and OSRs proposed by Cox on January 27, 2014. *See* 47 C.F.R. §§ 76.922(a), 76.923(a)(2). The Department also approves the DTA MPR and OSR proposed by Cox on November 13, 2014. A summary of these rates are provided hereto at Attachment A.<sup>6</sup>

#### a. Review of FCC Form 1240

In its Form 1240, Cox proposed increasing its MPR for BST programming from \$17.15 to \$21.50. *See* Attachment A. Cox proposed to maintain its OSR for BST programming at \$10.11. *Id.* The Department determines that Cox's Form 1240 was prepared in compliance with federal law, and the Department approves Cox's proposed rates. *See* 47 C.F.R. § 76.922(a).

A cable operator must calculate its BST programming rates using specific FCC-created forms incorporating the provisions of its rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. The FCC allows a cable operator to update annually its BST programming rates to account for

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<sup>4</sup> Cox submitted a Motion for Protective Order for its responses to certain Information Requests involving granular subscriber numbers. The Department will address this request in a separate Order.

<sup>5</sup> In addition to the citations referenced for Cox's FCC Forms 1205 and 1240 (*supra* at n.1), citations to the public and evidentiary hearing transcript are to "Tr. at [page]." Citations to Cox's responses to the Department's Record Requests are to "RR 1-1" through "RR 1-4." Citations to Cox's responses to the Department's Information Requests are to "IR 1-1" through "IR 1-5."

<sup>6</sup> For purposes of comparison, Attachment A also lists the approved MPRs and OSRs from last year's filing.

inflation; changes in the number of regulated channels; and changes in external costs, including programming costs, copyright costs, and franchise related costs. *See* 47 C.F.R. § 76.922(e). To adjust the rates on the Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. *Id.* §§ 76.922(e)(2)(ii)(A), (iii)(A). Projections involving copyright fees, retransmission consent fees, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *Id.* § 76.922(e)(2)(ii)(A).

The FCC's rate regulations establish the standard under which the Department must review rate adjustments on the Form 1240. *Id.* § 76.922(a); 207 C.M.R. § 6.01. Specifically, the FCC directs local rate regulators such as the Department to ensure that the approved rates are in compliance with the requirements of federal law and do not exceed the maximum permitted charges calculated by the FCC's rate forms. 47 U.S.C. § 543; 47 C.F.R. § 76.922(a). The Department may accept BST rates that do not exceed the approved maximum permitted charge as determined by federal regulations. *See* 47 C.F.R. §§ 76.922(a), (c). In addition, the Department shall only approve 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. A cable operator has the burden to demonstrate that its proposed rates for BST programming comply with Section 623 of the Communications Act of 1934 ("Communications Act"), as amended, and the FCC's implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning burden of proof to the cable operator); *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Report & Order & Further Notice of Proposed Rulemaking*, FCC 93-177 (rel. May 3, 1993) ("*FCC Rate Order*"), at ¶ 128.

In addition, the FCC permits cable operators to report projected costs, including costs associated with programming, that they believe are reasonably certain and reasonably

quantifiable. *Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Report & Order & Further Notice of Proposed Rulemaking*, FCC 95-397 (rel. Sept. 22, 1995), at ¶¶ 72-73. In particular, the FCC has built into its Form 1240 a true-up mechanism to account for actual costs that vary from those Projected Period estimates.<sup>7</sup>

The Department determines that Cox's proposed MPR of \$21.50 for its BST programming is justifiable. During the evidentiary hearing, the Department noted that the MPR had more than doubled in the last two years and had expressed concern about possible consumer rate shock in future rate filings. *See* Tr. at 18-19. The Department also noted that BST consumers would be paying the same amount of money despite the loss of a channel, C-SPAN, from the BST channel line-up. Tr. at 19-20. Cox explained that the MPR increases were associated with true-up costs and assessing less than the permissible MPR. Tr. at 19; *see also* Ex. 2. According to Cox, the MPR increases were also largely due to increases in programming costs and retransmission fees. Tr. at 19; *see also* Ex. 2. Cox indicated that fewer channels in the line-up were tied to increased costs due to increases in retransmission fees resulting from recently negotiated contract rates. Tr. at 20, 22; *see also* Ex. 2; RR-4 (specifying that six channels in the BST lineup, including Cox Sports Television, Cox Shopping Channel, QVC, HSN, CT-N, and Public Access, have no program, retransmission, or copyright costs). These increases are reflected in a comparison of the Company's filings from this year and last year. Specifically, this year the Company reported \$31,972.86 in retransmission fees in the True-Up

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<sup>7</sup> The true-up segment includes the compensation for overcharges or undercharges which have occurred during the True-Up Periods. The purpose of the true-up process is to compare the revenue a cable operator collected during the True-Up Period with the amount the operator should have been able to collect. If the sum collected is less than what should have been collected, then the operator is allowed to collect the difference during later rate periods. Conversely, if the sum collected exceeds the amount that should have been collected, then the operator must lower its rates in future rate periods to compensate subscribers for the difference. *Instructions for FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services* at 5 (July 1996).

Period as well as \$34,860.60 in retransmission fees in the Projected Period, reflecting increases from \$23,091.96 reported in the True-Up Period and \$26,561.22 in the Projected Period during last year's filing. *Compare* Ex. 2 at Worksheet 7, with D.T.C. 13-3 Order at 7.

Based on the foregoing analysis, the Department concludes that Cox's MPR and OSR for BST programming established in the Company's Form 1240 for the Projected Period from May 1, 2014, to April 30, 2015, are in compliance with applicable law and reasonable. *See* 47 C.F.R. §§ 76.922(a), (c); G.L. c. 166A, § 15. The Department therefore approves Cox's Form 1240 submitted on January 27, 2014. *See* Ex. 2.

b. Review of FCC Form 1205

In its Form 1205 filed on January 27, 2014, Cox proposed adjustments to its equipment and installation MPRs and OSRs. *See* Attachment A. These adjustments went into effect on May 1, 2014. *Id.* In anticipation of the Company's digital transition and encryption of its BST channels, Cox revised its Form 1205 on October 2, 2014, introducing an MPR and OSR for its new DTA. *See* Section 76.923(o) Filing. Cox further revised the Form 1205 on November 13, 2014, to reduce the proposed MPR and OSR for the new DTA to \$1.79. *See* Supp. Filing. The new DTA rate will go into effect on December 1, 2014.<sup>8</sup> *See* Attachment A. Cox made no other changes to its equipment and installation rates. *Id.* As discussed below, the Department

<sup>8</sup> Pursuant to federal requirements, existing subscribers are eligible for one or more DTAs at no charge for a limited time. *See* 47 C.F.R. § 76.630(a)(1)(ii)-(iv); FCC Consumer Guide, *Cable System Encryption* (Feb. 24, 2014) ("*Cable System Encryption Guide*"), at 1. Term lengths vary based upon a subscriber's particular circumstances and the cable operator's date of encryption. *See* 47 C.F.R. § 76.630(a)(1); *Cable System Encryption Guide* at 1. Cox indicates that April 28, 2015, is the "target date" to encrypt its BST channels. IR 1-1(b). Although Cox began offering DTA units to its subscribers on November 10, 2014, Cox clarified that the Company will offer Limited Basic (Starter) customers the option of two DTAs or cableCARDS at no charge for two years (five years if Medicaid qualified) and Expanded Basic (Essential) customers the option of two DTAs or cableCARDS at no charge for one year from the date of encryption. *See* IR 1-2(a), (c). Additionally, all other tiers of subscribers will be eligible for one free box for a limited time. *See* 47 C.F.R. § 76.630(a)(1)(iii). Cox indicates that the Company will apply the standard monthly charge for the DTA (or cableCARD) to: (1) those DTAs (or cableCARDS) in excess of those covered by the offers; (2) those DTAs (or cableCARDS) ordered more than 120 days after the date of encryption; and (3) those DTAs (or cableCARDS) ordered by all new customers subscribing to Cox after the date of encryption. *See* IRs 1-2(a), (c). Cox defines "new customers, for purposes of these offers" to be "customers who subscribe anew to Cox video services after the date Cox goes all-digital and encrypts the basic service tier" and that "[e]xisting customers opting to change service tiers will not be excluded from the offer applicable to their level of service when they ordered the DTA [or cableCARD]." IR 1-2(d).

determines that Cox's Form 1205 was prepared in compliance with federal law and approves Cox's proposed rates. *See* 47 C.F.R. § 76.923.

Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. *See FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equip. and Installation* (Jun. 1996), at 1, 7, 12-13. A cable operator typically prepares the Form 1205 on an annual basis using information from its previous fiscal year. *Id.* at 2; 47 C.F.R. § 76.923(n)(3). However, a cable operator may submit a revised Form 1205 at a time other than its annual filing in order to set a permitted charge for a new type of equipment ("New Equipment Filing"). 47 C.F.R. §§ 76.923(n)(4), (o). To account for the new equipment, the cable operator may only revise Schedule C and the relevant step of the Worksheet for Calculating Permitted Equipment and Installation Charges of Form 1205 as part of the cable operator's New Equipment Filing. *Id.* § 76.923(o). The cable operator must otherwise rely on entries from its "most recently filed Form 1205 for information not specifically related to the new equipment, including but not limited to the Hourly Service Charge." *Id.*; *see also Review by the Cable Television Div. of the Dep't of Telecomms. & Energy of Fed. Commc'ns Comm'n Form 1205 filed by Adelphia Cable Commc'ns, Inc. proposing a monthly lease rate for digital video recorders*, C.T.V. 03-8, *Rate Order* (Feb. 20, 2004), at 6-7, 9 (requiring the company to retain the same rate of return in the New Equipment Filing that was utilized in the company's initial Form 1205 filing from that year). The cable operator must also assign equal amounts to the Depreciation and Accumulated Depreciation amounts listed on Schedule C, Lines J and E, respectively, in its New Equipment Filing. *See Review by the Cable Television Div. of the Dep't of Telecomms. & Energy of Fed. Commc'ns Comm'n Form 1205 filed by Adelphia Cable Commc'ns, Inc. proposing a monthly lease rate for high definition television converters*, C.T.V. 03-7, *Rate Order* (Feb. 13, 2004) ("C.T.V. 03-7 Rate Order"), at

10-12. In this proceeding, the Department reviews Cox's Form 1205 for the fiscal year ending December 31, 2012. *See* Ex. 1; Supp. Filing.

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

i. January 27 filing

In its January 27, 2014, Form 1205 filing, Cox proposed the following: decreasing its MPRs for both HD/DVR Receivers and Digital Receivers from \$2.97 to \$2.96; leaving unchanged its MPRs for cableCARDS (\$1.86) and Change of Service (In Office) (\$1.99); and increasing its MPRs for remote controls from \$0.14 to \$0.15, and for both Change of Service (Home Visits) and Service Visits Unrelated to Cox Equipment or Signal Delivery from \$29.27 to \$33.90. *See* Attachment A. Cox also proposed increasing its MPRs for all installations. *Id.* Specifically, Cox proposed increasing its MPR for Installation of Unwired Home from \$63.41 to \$73.44, for Installation of Prewired Home from \$24.39 to \$28.25, for both Add/Move/Reconnect Additional Outlet at Time of Initial Install and After Initial Install from \$29.27 to \$33.90, and for Digital Installation from \$63.41 to \$73.44. *Id.* Cox proposed decreasing its OSRs for both HD/DVR Receivers and Digital Receivers by \$.01 to \$2.96, which corresponds to those units' proposed MPRs, and retaining its other equipment and installation OSRs at the same levels as last year. *Id.*

In its review, the Department noted that Cox's proposed MPRs for installations have nearly doubled in the past few years. Tr. at 19. The Department also noted that Cox reported an increase in related capital costs with a decrease in the average service hours per installation,

leading to an overall increase of nearly \$8.00 in the hourly service charge for installations from last year's filing. *Id.* at 30-31; *see also* Ex. 1. Cox indicated that the main factor contributing to the increase in capital costs was "due to the replacement of [older vehicles with] new vehicles" and the reduction in service hours "to the drop in boxes and service overall" due to the loss of 22,000 customers nationwide. *See* Tr. at 30-33; *see also* Ex. 1; RR-3 (detailing "the components that create the increase in Vehicles Net Book Value in 2012"). Altogether, these factors resulted in the increase to the hourly service charge and, consequently, to the MPRs for installation. *See* Tr. at 19, 30-33; *see also* Ex. 1.

The Department also noted variations reported in the values attributed to the capital costs of Addressable Boxes. *See* Tr. at 27-30; *see also* Ex. 1. Specifically, the Department asked why a decrease in the number of addressable units in service (namely, a loss of approximately 35,000 units) would be coupled with a nearly \$280,000 increase in the Net Book Value of Addressable Boxes. *See* Tr. at 27; *see also* Ex. 1. The Department also inquired as to the reported decrease in the accumulated depreciation of the Addressable Boxes in service, when the Department would otherwise expect an increase in that value. *See* Tr. at 27; *see also* Ex. 1. Cox explained that the increase in the Net Book Value of the Addressable Boxes was due to the purchase of new units in 2012. *See* Tr. at 27. Cox also clarified that the Addressable Boxes purchased in 2009 were fully depreciated and removed entirely from the books, which resulted in the decrease in the reported accumulated depreciation. *Id.* at 28-30.

The Department next considers Cox's OSRs for equipment and installation. Cox proposed to either decrease or maintain its equipment OSRs, and to retain all of its installation OSRs. *See* Attachment A. In no case did Cox propose to increase its OSR. *Id.* Where its OSRs decreased, Cox matched the corresponding MPRs, which also decreased. *Id.* In no event do Cox's OSRs exceed its MPRs. *Id.*

Based on the foregoing analysis, the Department concludes that Cox's equipment and installation MPRs and OSRs established in the Company's Form 1205 are in compliance with applicable law. *See* 47 C.F.R. § 76.923(a)(2). The Department therefore approves Cox's Form 1205 submitted on January 27, 2014. *See* Ex. 1.

ii. *New BST equipment filing*

In anticipation of the Company's digital transition and encryption of its BST channels, Cox revised its Form 1205 on October 2, 2014, introducing an MPR and OSR for its new DTA. Section 76.923(o) Filing; Supp. Filing. Cox initially proposed an MPR of \$2.03 and an OSR of \$1.99 for the new DTA. *See* Section 76.923(o) Filing; IR 1-2(e). After Department inquiries about the Company's calculation methodology, Cox further revised its Form 1205 on November 13, 2014, and proposed an MPR and OSR of \$1.79 for the new DTA. Supp. Filing, Cover Letter; IR 1-5(c); *see also Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, *Fifth Report & Order*, FCC 12-59 (rel. Jun. 12, 2012) ("*DTV Fifth Report & Order*") (subsequent history omitted), at ¶ 14 (indicating that a range of \$0-\$2 for DTAs "would satisfy the requirement for affordable equipment because the minimal additional cost, if any, is unlikely to discourage use of this equipment"). The decrease in the proposed rates resulted from the Company matching the DTA's depreciation expense to the Accumulated Depreciation reported on Schedule C, Lines E and J. *See* Supp. Filing, Cover Letter; *see also DTV Fifth Report & Order* at 13, n.73, *citing* 47 U.S.C. § 543(b)(3), 47 C.F.R. § 76.923 (specifying that "to the extent that such equipment is subject to rate regulation, operators must comply with those requirements"); C.T.V. 03-7 *Rate Order* at 10-12 (in ensuring that a cable operator does not receive a higher return on capital than it is otherwise entitled, specifying that depreciation expense and Accumulated Depreciation "must be determined as of the same date" and that those amounts should be equal "during the first year the equipment is placed in service"). Cox proposed that its new DTA rate go into effect on

December 1, 2014. *See* Attachment A. Cox made no other changes to its equipment and installation rates. *Id.*

Based on the foregoing analysis, the Department determines that the proposed \$1.79 MPR and OSR for the new DTA are in compliance with applicable law. *See* 47 C.F.R. §§ 76.923(a)(2), (o). The Department therefore approves Cox's revised Form 1205 submitted on November 13, 2014. *See* Supp. Filing.

#### IV. ORDER

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

ORDERED: That the MPR and OSR for BST programming listed on Cox's FCC Form 1240 for the Town of Holland, submitted on January 27, 2014, are APPROVED; and it is

FURTHER ORDERED: That the MPRs and OSRs for equipment and installations listed on Cox's FCC Form 1205, submitted on January 27, 2014, are APPROVED; and it is

FURTHER ORDERED: That the MPR and OSR for the new DTA listed on Cox's revised FCC Form 1205, submitted on November 13, 2014, are APPROVED.

By Order of the Department

/s/ Karen Charles Peterson  
Karen Charles Peterson, 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.