



COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE

D.T.C./C.T.V. 06-6

September 25, 2007

Petition of Cox Communications to establish and adjust the basic service tier programming, equipment and installation rates for the community of Holland, Massachusetts.

APPEARANCE:

Alan D. Mandl, Esq.
Smith & Duggan LLP
55 Old Bedford Road
Lincoln, MA 01773-1125

FOR: COX COMMUNICATIONS
Petitioner

I. INTRODUCTION

On December 1, 2006, Cox Communications (“Cox” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the then Department of Telecommunications and Energy (“Department”)¹ a Federal Communications Commission (“FCC”) Form 1240 that proposed an increase in its monthly programming basic service tier (“BST”) maximum permitted rate (“MPR”) for the Town of Holland, Massachusetts (Exh. Cox-1). Despite Cox’s proposed increase in its BST MPR, the Company proposed to leave unchanged the actual monthly BST programming rate of \$10.27 that it currently charges Holland subscribers. Cox also filed its nationwide FCC Form 1205 for the year ending December 31, 2005, on which it proposed new MPRs for equipment and installations (Exh. Cox-2). The Company did propose to change certain equipment and installation rates; these new rates would become effective on July 1, 2007 (Exh. Cox-1, at Proposed Rate Structure).

The Cable Division held a public and an evidentiary hearing on Cox’s pending filings in Boston on February 13, 2007. There were no intervenors in this proceeding. The evidentiary record includes two Cox exhibits, seven Department exhibits, and the Company’s responses to record requests.

¹ Pursuant to Governor Patrick’s Reorganization Plan, Chapter 19 of the Acts of 2007, the predecessor agency, the Department of Telecommunications and Energy, ceased to exist, effective April 11, 2007. The Department of Telecommunications and Cable has assumed the duties and powers previously exercised by the Cable Division under General Laws, Chapter 166A. References in this Rate Order to the “Cable Division” refer to the time period before April 11, 2007; references to the “Department” refer to the time period commencing on April 11, 2007. Documents in proceedings continuing across the transition date, such as exhibits, are described as “Department” documents instead of “Cable Division” documents, regardless of when they were filed.

II. REVIEW OF THE FCC FORM 1205

A. Introduction

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. Instructions for FCC Form 1205, at 7, 12-13. A cable operator prepares the FCC Form 1205 on an annual basis using information from the cable operator's previous fiscal year. Id. at 2. In this proceeding, the Department reviews Cox's nationwide FCC Form 1205, based on the fiscal year ending December 31, 2005 (Exh. Cox-2, at 1).

Subscriber charges established by the FCC Form 1205 may not exceed charges based on actual costs as determined in accordance with the FCC's regulatory requirements.

47 C.F.R. § 76.923(a)(2). The burden of proof is on the cable operator to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act of 1934, as Amended (the "Communications Act"), and implementing regulations.

47 U.S.C. § 543; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, at 5716, ¶ 128 (1993) ("FCC Rate Order"); see also 47 C.F.R. § 76.937(a).

The primary questions raised by Cox's filing result from changes the Company has made to its equipment rate calculations.² In particular, Cox has proposed to alter the

² Cox proposed to change only one of its installation rates. Cox sought to reduce its charge for the initial installation of an unwired home by \$0.01 to \$55.98; a de minimis reduction necessitated by a reduction in the MPR (Exh. Cox-1, at Proposed Rate Structure; Exh. Cox-2, at 7).

methodology it uses to establish its monthly lease rates for converters, and has also proposed a delayed effective date for its equipment rates in Holland.

On Cox's previous nationwide FCC Form 1205, the Company had proposed MPRs for five distinct categories of converters: (1) an addressable/digital converter, (2) a high definition ("HD") converter, (3) a digital video recorder ("DVR") converter, (4) an HD/DVR converter, and (5) a non-addressable converter.³ Cox Communications, CTV 05-1, at Rate Schedule (2006). In that proceeding, the Cable Division approved the following MPRs for these converters: \$5.78 for the addressable/digital converter, \$10.84 for the HD converter, \$12.39 for the DVR converter, \$13.51 for the HD/DVR converter, and \$0.20 for the non-addressable converter. Id. The Company had chosen actual rates that were lower than its MPRs: \$4.20 for its addressable/digital converters, \$9.95 for its HD converters, and \$9.99 for its DVR and HD/DVR converters (Exh. Cox-1, at Proposed Rate Structure; CTV 05-1, at Rate Schedule).⁴ On Cox's current nationwide FCC Form 1205, the Company has proposed combining all of its converters except the non-addressable converters into a single category, called "Addressable Converters," and has proposed an MPR of \$5.74 for this category,

³ Cox has called this category of converter either "analog" or "non-addressable" on its FCC Form 1205 filings. For consistency, we will use "non-addressable," the term appearing on the Company's current filing (Exh. Cox-2, at 3, 5, 7).

⁴ Cox did not offer its non-addressable converter to Holland subscribers. If basic-only subscribers required a converter, Cox had been charging them the standard rate for addressable/digital converters of \$4.20 per month. CTV 05-1, at 7-8. In the CTV 05-1 Rate Order, the Cable Division pointed out that the FCC's rate regulations require that the costs of customer equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic subscribers. Id. at 8, see 47 C.F.R. § 76.923(c)(2). The Cable Division directed Cox to either establish a separate converter rate for its basic-only subscribers in Holland, or else offer basic-only subscribers a converter without charge. Id. at 9. Cox has chosen to provide basic-only subscribers a converter at no cost (Tr. at 7).

calculated using the aggregated costs of these converters (Exh. Cox-2, at 3, 5, 7).⁵ This new MPR is lower than Cox's previously-approved MPRs for these converters, and is also lower than the rate Cox was currently charging for HD converters, DVR converters, and HD/DVR converters. As noted above, the FCC's rate regulations require that equipment charges "shall not exceed charges based on actual costs...." 47 C.F.R. § 76.923(a)(2). Accordingly, Cox must charge subscribers who lease any of the converters included in its combined converter category, a monthly lease rate that does not exceed the MPR of \$5.74. Cox has proposed to charge \$4.98 for these converters (Exh. Cox-1, at Proposed Rate Structure). This would increase the monthly charge subscribers pay for addressable/digital converters by \$0.03, from \$4.95 to \$4.98; but reduce the monthly charge subscribers pay for HD converters by \$4.97, from \$9.95 to \$4.98; and reduce the monthly charge subscribers pay for HD/DVR converters by \$5.01, from \$9.99 to \$4.98 (*Id.*, CTV 05-1, at Rate Schedule).⁶ Cox also has proposed to reduce its monthly lease rate for remote controls by \$0.03, from \$0.20 to \$0.17. This \$0.17 rate is equal to the proposed MPR appearing on the FCC Form 1205 (Exh. Cox-1, at Proposed Rate Structure; Exh. Cox-2, at 7).⁷ Cox implemented its new equipment rates on July 1, 2007, the same date as the starting date for its FCC Form 1240 projected period (Exh. Cox-1, at 1, and at Proposed Rate Structure).

⁵ Cox's nationwide form also proposes an MPR of \$0.23 for non-addressable converters (Exh. Cox-2, at 7). However, Cox has not proposed a charge for non-addressable converters in Holland (Exh. Cox-1, at Proposed Rate Structure).

⁶ Cox no longer offers a DVR-only converter in Holland (Tr. at 24).

⁷ In the previous Cox rate proceeding, the Cable Division approved an MPR of \$0.30 per month for remote controls. CTV 05-1, at Rate Schedule. Cox chose to charge subscribers a lower rate of \$0.20 per month. *Id.*

Cox's proposal raises two issues. First, we consider whether Cox's proposal to combine converters into a single category for the purpose of calculating a monthly lease rate is a permissible methodology under FCC regulations. Second, we consider whether July 1, 2007 is an appropriate date for Cox's implementation of its new equipment rates.

B. The Company's Aggregation of its Converters

The Telecommunications Act of 1996 and the FCC's rate regulations permit a cable operator to combine similar equipment into broad categories for ratemaking purposes. 47 U.S.C. § 543(a)(7)(A); 47 C.F.R. § 76.923(c)(1). The FCC allows such an aggregation to be made, provided that each category includes only equipment of the same type, regardless of the levels of functionality of the equipment within each such broad category. Id. Thus, while converters of different functionality may be aggregated with each other, converters and remote controls cannot be so mingled; these two types of equipment must have separate rates. See 47 C.F.R. § 76.923(b). In addition, the law provides that the costs of customer equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic only subscribers. 47 U.S.C. § 543(a)(7)(A); 47 C.F.R. § 76.923(c)(2). Accordingly, under the regulations, a cable operator may combine all of its converters, except those converters it provides to basic-only subscribers, into a single rate category, despite the varying functionality of the converters.

We note that HD, DVR and HD/DVR converters were not yet available in 1996, when Congress and the FCC approved the current law and regulations. Nonetheless, when the FCC adopted the applicable regulations, it observed: "[w]e will maintain a flexible approach with respect to categorization of new technology. For example, when new types of advanced boxes are designed and developed for use in cable systems, operators may broaden the

‘converter box’ category and aggregate such new technology with other boxes that are used to receive services delivered over the cable system, notwithstanding the fact that the new equipment may perform other functions as well.” Implementation of Section 301(j) of the Telecommunications Act of 1996: Aggregation of Equipment Costs by Cable Operators, 11 FCC Rcd 6778, FCC 96-257, at 6783, ¶ 10 (1996).

We find that Cox’s proposal to establish a single rate category for all of its converters, except its non-addressable units, is permitted under applicable law, and is hereby approved. Moreover, Cox’s establishment of a single rate category for all of these converters brings greater transparency to the rate-setting process, by clearly separating out the lease rate Cox charges for the physical converter unit from any associated charge for the advanced service the subscriber is receiving. For example, under this proposal, the monthly charge for an HD/DVR converter is separate from the charge for DVR service.

C. The Company’s Revised Rate Filing and Rate Change Date

1. Procedural Background

Between 2002 and 2005, Cox filed its proposed rates with the Cable Division in early May, for rate changes that would become effective three months later, on August 1. See CoxCom, Inc. d/b/a Cox Communications New England, CTV 02-4, at 1 (2003); CoxCom, Inc. d/b/a Cox Communications New England, CTV 03-2, at 1 (2004); Cox Communications New England, CTV 04-2, at 1 (2004). Most recently, Cox filed its

FCC Forms 1240 and 1205 on May 2, 2005, with a rate change date of August 1, 2005.⁸

CTV 05-1, at 1 (2006).

On its 2005 FCC Form 1205, Cox proposed an MPR of \$5.78 for its addressable/digital converters, but chose not to change any if its equipment rates on August 1, 2005. Id. at 1, 10, 12. Subsequently, at the Cable Division hearing held on January 18, 2006, Cox proposed to increase its rate for addressable/digital converters from \$4.20 to \$4.95, in March 2006.⁹ CTV 05-1, Tr. at 6-7. Cox further stated its intention to continue filing its proposed rates on May 1 for an August 1 implementation. Id. at 22-23.

In the CTV 05-1 Rate Order, the Cable Division considered whether Cox was permitted to change one of its rates on a date other than its rate change date of August 1, 2005.

CTV 05-1, at 10-11. The Cable Division determined that the FCC's regulations do not prohibit an operator from changing a rate at a time later than the end of the 90-day period.

Id. at 10; citing Frontiervision Operating Partners, 18 FCC Rcd 20416, DA 03-3127,

at 5-6, ¶ 12 (2003); application for review denied, Frontiervision Operating Partners,

19 FCC Rcd 23096, FCC 04-264 (2004); affirmed sub nom City of Winchester et al. v. FCC:

Memorandum Opinion, 173 Fed. Appx. 419, 2006 WL 751373 (6th Cir. 2006). The Cable

Division concluded that after Cox gave the required 30-day notice to subscribers, the Company could increase its monthly charge for addressable/digital converters to \$4.95. CTV 5-1, at 11.

⁸ The Cable Division approved a new programming BST MPR for Cox, effective on August 1, 2005, but the operator did not change its operator selected rate, which is the rate actually charged to subscribers. CTV 05-1, at 1, and at Rate Schedule.

⁹ The addressable/digital converter rate of \$4.20 had been in effect since August 1, 2003. CTV 03-2, at Rate Schedule.

Following the issuance of the Rate Order in CTV 05-1, Cox increased its monthly charge for addressable/digital converters to \$4.95, effective June 24, 2006 (Tr. at 12).

On April 28, 2006, pursuant to 47 C.F.R. § 76.922(c)(1), Cox notified the Cable Division that it proposed to change its annual filing date from May 1 to December 1. CTV 05-1, Letter of Alan D. Mandl, April 28, 2006, at 2. In accepting this change in Cox's annual filing date, the Cable Division directed Cox to affirm that no rate decrease in Holland was required on August 1, 2006, the 12-month anniversary of its last rate change date. CTV 05-1, Cable Division Letter, May 4, 2006. The Cable Division noted that the FCC regulations provide that "[i]n all events, a system must adjust its rates every twelve months to reflect any net decreases in external costs that have not previously been accounted for in the system's rates." Id., see 47 C.F.R. § 76.922(e)(2)(ii)(B). In response, Cox informed the Cable Division that no rate decrease in Holland was required on August 1, 2006. CTV 05-1, Letter of Gary Dalton, May 15, 2006. Cox explained that its conclusion was based on a calculation, in accordance with FCC Form 1240, of the MPR for the projected period. Id. With respect to its FCC Form 1205 rates, Cox had previously stated, at the January 18, 2006 hearing, that the preliminary FCC Form 1205 the Company had prepared showed that no decrease in its converter rate was necessary. CTV 05-1, Tr. at 23.

Cox made the rate filing at issue on December 1, 2006 (Exhs. Cox-1, Cox-2). In this filing, Cox proposed a projected period commencing on July 1, 2007, seven months after its filing date (Exh. Cox-1, at 1). Cox also proposed to change its equipment rates on July 1, 2007 (id. at Proposed Rate Structure). Cox had not suggested previously any intention to alter its practice of proposing a rate implementation date three months after its filing date.

2. Analysis

As we discussed above, Cox's aggregation of all of its converters, except its non-addressable units, into a single rate category, would reduce the monthly MPR for all units to \$5.74 (Exh. Cox-1, at Proposed Rate Structure).¹⁰ As we also discussed, the Company has proposed to reduce its actual monthly lease rate for HD converters by \$4.97, from \$9.95 to \$4.98; and to reduce the monthly lease rate for HD/DVR converters by \$5.01, from \$9.99 to \$4.98 (id.; CTV 05-1, at Rate Schedule). At issue is the date on which these rate reductions ought to have become effective. Cox proposed that the rates should become effective on July 1, 2007 (id. at 1, and at Proposed Rate Structure). Since, under Cox's proposal, Holland subscribers who lease HD and HD/DVR converters would be required to wait until July 1, 2007 before deriving the benefit of these lower rates, the Cable Division questioned whether the Company should have chosen an earlier effective date (Tr. at 11-16).

Cox contended that since it increased one of its equipment rates on June 24, 2006, the Company was precluded from changing any of its regulated rates until 12 months had passed since the date of its last regulated rate change (Tr. at 13). Cox was referring to an FCC regulation, that states: "operators that elect the annual rate adjustment method may not adjust their rates more than annually to reflect inflation, changes in external costs, changes in the number of regulated channels, and changes in equipment costs." 47 C.F.R. § 76.922(e)(1). Cox provided no other authority for the proposition that an operator's change in a single FCC Form 1205 rate prevents any other equipment rate change for 12 months. Moreover,

¹⁰ We note that the Company intends to implement an increase to its unregulated DVR service, an increase that would offset any equipment price reduction for DVR subscribers (Tr. at 23). The timing of an increase in an unregulated service rate is not relevant to our analysis.

Cox conceded that there was “some ambiguity under the FCC rules as to whether they spoke to programming rates only versus equipment rates” (Tr. at 15). The Company said that it “took ... a conservative position, namely that no rate change should occur prior to at least twelve months having elapsed” (id.).

For the reasons discussed below, we find that Cox has misapplied the FCC rule in this instance. The FCC rule in question must be considered in conjunction with the FCC’s filing requirements applicable to FCC Form 1205, which differ significantly from the FCC Form 1240 requirements. The primary difference is the mandatory nature of an FCC Form 1205 filing in contrast to the elective nature of an FCC Form 1240 filing. A cable operator may elect not to file an FCC Form 1240 for a particular year. 47 C.F.R.

§ 76.923(n)(3).¹¹ But the FCC’s regulations stipulate: “[i]f an operator elects not to file an FCC Form 1240 for a particular year, the operator must file a Form 1205 on the anniversary date of its last Form 1205 filing....” Id. Significantly, the FCC’s regulation uses the mandatory word, “must.” This mandatory annual filing rule stems from the 1992 Cable Act’s requirement that operators are to “charge rates based on actual costs for installation and lease of customer equipment.” Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, MM Docket No. 92-266, 11 FCC Rcd 388, FCC 95-397, at 403, ¶ 35 (1995); see Communications Act, Sec. 623(b)(3), 47 U.S.C. § 543(b)(3).

¹¹ The FCC explicitly provided for such a cable operator’s decision on the FCC Form 1240, which provides for two true-up periods, each 12 months long. See Instructions for FCC Form 1240, at 5. Indeed, the Instructions specifically provide for a true-up period longer than 24 months. Id.

Also, the Instructions for FCC Form 1205 direct a cable operator: “[y]ou must use this form to update regulated equipment and installation charges on an annual basis. ... and “[y]ou must reflect the most recent fiscal year on this Form if you are filing to satisfy FCC rules requiring an annual filing of this Form.” Instructions for FCC Form 1205, at 2, 6. The FCC has observed that “[t]his past cost requirement follows from the Communications Act requirement that equipment and installation rates be based on actual cost....” Comcast Cablevision of Detroit, Inc., 15 FCC Rcd 24022, DA 00-2748, at 24028, ¶ 15 (2000).

The FCC’s requirement that cable operators must file FCC Form 1205 annually thus ensures that any decrease in a specific equipment or installation rate resulting from an FCC Form 1205 calculation will be passed on to subscribers.¹² To allow a cable operator to defer its annual rate adjustment for all of its FCC Form 1205 rates because the operator had chosen to delay a change in only one equipment rate, would be contrary to both the FCC’s intent in establishing the annual filing requirement, and to the statutory requirement that equipment and installation rates be established “on the basis of actual cost.” The clear annual filing requirement for FCC Form 1205 should not be overridden by an interpretation of an ambiguous provision concerning rate changes.

Moreover, the FCC designed the FCC Form 1240 to calculate only one BST MPR, and a cable operator may choose only one programming rate for the community covered by the form (see, e.g., Exh. Cox-1, at 4, Lines I9 and I10).¹³ It is axiomatic that this single rate can

¹² Conversely, an operator’s overcharge for equipment one year cannot be returned to subscribers by a lower equipment rate the following year; an operator calculates rates on each FCC Form 1205 independently of the previous form.

¹³ Indeed, the FCC’s regulations specify that rates must be uniform throughout each franchise area. 47 C.F.R. § 76.984(a).

have only one annual rate change date. In contrast, an FCC Form 1205 establishes separate rates for many different types of equipment and different methods of installation. For instance, on its current FCC Form 1205, Cox calculated MPRs for three types of equipment and six methods of installation, as well as a separate fee for changing tiers of service (Exh. Cox-2, at 7, Summary Schedule). On its previous form, Cox had proposed five different MPRs for five types of converter. CTV 05-1, at Rate Schedule. Although the FCC's rule expects that cable operators will change all of their rates at the same time, there is nothing in the rule that states that all of the rates established by an FCC Form 1205 must change on the same date. See 47 C.F.R. § 76.922(e)(1). In fact, the FCC Form 1205 itself does not contain any line on which a cable operator can enter the starting date for a rate change. Further, the FCC allows an operator to introduce a rate for "a new type of equipment" at any point during the projected period, and the introduction of this new rate has no effect on the rate change date for all other FCC Form 1205 rates.¹⁴ 47 C.F.R. § 76.923(o).

But even if, arguendo, 47 C.F.R. § 76.922(e)(1) were deemed to apply to rates established by an FCC Form 1205, this rule should not prohibit a cable operator's early rate change where, as in the present case, that change has no practical effect on most subscribers' rates, and where a delay in the rate change unduly results in harm to subscribers leasing HD and HD/DVR converters. Special circumstances should result in exceptions to the general rule. In the present case, the rate increase that led Cox to delay its rate change date to July 1, 2007, was the increase in its addressable/digital converter rate from \$4.20 to \$4.95,

¹⁴ In fact, the argument could be made that Cox is actually proposing a rate for a new type of equipment, resulting from the aggregation of its advanced converters into a single category. Cox is not proposing to adjust an existing equipment rate category that the Cable Division had previously approved.

effective June 24, 2006 (Tr. at 13). Effective July 1, 2007, Cox has proposed to both increase the amount that subscribers pay monthly to lease an addressable/digital converter, from \$4.95 to \$4.98; and to lower the monthly lease rate that subscribers pay for a remote control, from \$0.20 to \$0.17.¹⁵ Consequently, subscribers who lease both an addressable/digital converter and a remote control will see no change in their combined equipment rate of \$5.15. Cox has stated that there was “close to a one-to-one relationship” between subscribers who lease converters and those who also lease remote controls (Tr. at 16). This suggests that virtually every Holland subscriber who leases an addressable/digital converter is also leasing a remote control. Let us suppose that Cox had implemented its rate changes in Holland on January 1, 2007. Although the Company’s addressable/converter rate would have increased less than a year after the previous increase, because of the required decrease in the remote control rate, the subscribers leasing both of these units would have experienced no change in the combined rate. At the same time, other subscribers leasing HD and HD/DVR converters would have experienced a substantial decrease in their monthly lease rate. The cable regulations should not be interpreted so as to frustrate the FCC’s intent to require annual FCC Form 1205 filings based on fresh cost data, and to delay the rate decreases necessitated by this fresh data.¹⁶

¹⁵ As noted above, Cox was required to reduce its remote control rate from \$0.20 to \$0.17, because its FCC Form 1205 calculated an MPR for remote controls of \$0.17 (Exh. Cox-2, at 7). It appears that Cox has proposed to increase its monthly lease rate for addressable/digital converters from \$4.95 to \$4.98, effective July 1, 2007, solely to recover the \$0.03 per month it would lose because of the required decrease in its remote control rate.

¹⁶ Even if Cox were prevented from increasing its addressable/digital converter rate on January 1, 2007 under this example, and could only increase this rate on the anniversary date of June 24, 2007, its revenue would have been reduced by only \$0.03 per subscriber

That Cox should have acted to reduce its converter rates is evidenced by the analogous rule applicable to FCC Form 1240 rate decreases. Even though an FCC Form 1240 need not be filed annually; as mentioned above, a cable system “must adjust its programming rates every twelve months to reflect any net decreases in external costs that have not previously been accounted for in the system’s rates.” 47 C.F.R. §§ 76.922(e)(2)(ii)(B).¹⁷ Significantly, once a cable operator has identified these decreases, it is required to reduce its programming rate on its own motion, without first obtaining the local rate regulator’s approval. TCI Cablevision of Ohio, Inc. (Fairfield, Ohio), 13 FCC Rcd 17303, DA 98-1268 (1998). The FCC stated: “[w]hen TCI-O computed its rates on the basis of the decrease in its external costs, it should have decreased its rates accordingly, without waiting for advance approval of the decrease from the franchising authority.” Id. at 17306, ¶9.

Accordingly, we conclude that 47 C.F.R. § 76.922(e)(1) does not apply in this situation and that Cox was not required to delay the proposed equipment rate reductions until July 1, 2007. Moreover, we conclude that as soon as Cox had determined that equipment rates would decrease, the Company should have commenced the regulatory processes necessary to implement these reductions. We next address the date on which these rate reductions should have become effective.

We begin with an analysis of when Cox either knew or reasonably could have known that a rate reduction was required. Cox stated that the FCC Form 1205 under review in this

per month. If we make the worst-case assumption that all 973 Holland subscribers the Company reported for True-Up Period 2 leased this converter, the total revenue loss to Cox would have been \$175.14, or $(973) \times (\$0.03) \times (6)$ (see Exh. Cox-1, at 2).

¹⁷ The FCC’s regulations, at 47 C.F.R. § 76.922(d)(3)(i), contain the same rule for FCC Form 1210 filings.

proceeding was first prepared in August 2006 (RR-CTV-4).¹⁸ According to Cox, this was the first form on which the Company aggregated all of its converters, except its non-addressable units, into a single category for rate purposes (Tr. at 8-10). As discussed above, this aggregation of equipment resulted in an MPR of \$5.74 per month for all of its aggregated converters (Exh. Cox-2, at 7). In August 2006, Cox was charging \$9.95 per month for HD converters and \$9.99 per month for HD/DVR converters (Tr. at 9). Therefore, when Cox prepared the FCC Form 1205 filed in this proceeding, in August 2006, the Company was aware that the rates subscribers were paying for HD and HD/DVR converters exceeded the MPR for its new combined category by approximately \$4.00 per month. Cox explained that its FCC Form 1205, which is dated September 30, 2006, was first filed with another jurisdiction on October 1, 2007, and not filed anywhere before that date (Exh. Cox-2, at 7; RR-CTV-4).

In Holland's case, Cox might have quickly implemented its newly-calculated lower rate for the new combined converter category, by quickly filing its new FCC Form 1205 with the Cable Division for review. However, before Cox could have made this filing, the Company would have had to request the Cable Division to accept a second change in its annual filing date. See 47 C.F.R. § 76.922(e)(1). Accordingly, it was not unreasonable for Cox to have delayed its filing until the new annual filing date of December 1 that the Cable Division had already approved. But we now realize that the Cable Division's approval was based on an

¹⁸ That Cox only completed its FCC Form 1205 in August 2006 perplexes the Department, because at the January 18, 2006 hearing, when the Cable Division asked about adjustments to the addressable/digital converter rate, Cox stated that while it did not yet have its final audited statements for 2005, which would be available in March, "there has been a preliminary calculation performed at corporate, and we do not believe that the maximum permitted rate will force us to a lower rate, and we have no plans at this time to change -- to increase the rate either." CTV 05-1, Tr. at 23.

incomplete disclosure by the Company. In May 2006, when Cox had requested its change in filing date, it failed to reveal its intent to diverge from its standard practice of changing rates 90 days after the rate filing. We find that when Cox finally did file its FCC Form 1205 with the Cable Division on December 1, 2006, at the very least, the Company should have adopted the earliest possible implementation date: March 1, 2007. Instead, Cox proposed a further delay of four months beyond the statutory minimum of 90 days, before implementing rates for its new converter category that did not exceed the MPR established by its FCC Form 1205. By this delay, Cox has violated the intent of the FCC's requirement that cable operators make annual FCC Form 1205 filings in order to reflect, in their equipment and installation charges, decreases necessitated by lower MPRs calculated by the rate form.¹⁹

3. Conclusion

We conclude that once Cox had determined that its rates for HD and HD/DVR converters would decrease, it had an obligation to pass on these decreases to subscribers. We stress that the FCC's rules are not clear on the rate change issue Cox's filing has raised, and it is essential that we meet our responsibility of finding that the rates we approve are just and reasonable. When we see a converter rate that exceeds the Company's proposed MPR by over \$4.00, we can determine that this rate is not reasonable. For Cox to indicate that it did not change its rates because it had increased another converter rate the previous year is unreasonable. Furthermore, given the size of the rate decreases Cox is deferring, for the

¹⁹ We further observe that there would have been no change in Cox's BST programming rate by a second alteration of the effective date of its Holland FCC Form 1240, because Cox did not propose to change Holland's actual BST rate of \$10.27 (Exh. Cox-1, at Proposed Rate Structure).

Company to indicate that it is waiting so that it can increase one of its rates by three cents is unacceptable.

We conclude that Cox should have implemented its new equipment and installation rates, except for its addressable/digital converter rate, on March 1, 2007. We direct Cox to refund to subscribers the difference between the HD and HD/DVR MPRs it could have charged, effective March 1, 2007, and the rates Cox actually did charge between March 1, 2007 and July 1, 2007. We direct Cox to submit a plan by which the Company will implement this refund. We further direct the Company to submit the refund plan by October 9, 2007.

Apart from the issue of Cox's rate change date, the Department finds that Cox's FCC Form 1205 complies with the FCC's regulations. We conclude that the FCC Form 1205 submitted by Cox establishes rates for equipment and installations that are reasonable and in compliance with applicable law.

III. REVIEW OF THE FCC FORM 1240

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which a cable operator must calculate its rates. The FCC Form 1240 allows a cable operator to annually update its BST programming rates to account for inflation, changes in external costs, and changes in the number of regulated channels. In order that rates be adjusted 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 such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. §§ 76.922(e)(2)(ii)(A) and 76.922(e)(2)(iii)(A). Cable operators may also project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable; however, such

projections are not presumed to be reasonably certain and reasonably quantifiable.

47 C.F.R. § 76.922(e)(2)(ii)(A).

The standard under which the Department must review rate adjustments on the FCC Form 1240 is found in the FCC's rate regulations. Specifically, the rate regulator shall assure that the rates comply with the requirements of Section 623 of the Communications Act. 47 U.S.C. § 543; 47 C.F.R. §§ 76.922, 76.923, and 76.930. The Department may accept, as in compliance with the statute, BST rates that do not exceed the "Subsequent Permitted Charge" as determined by federal regulations. See 47 C.F.R. § 76.922(c). In addition, the Department shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 U.S.C. § 543; 47 C.F.R. §§ 76.937(d) and (e); see also 47 C.F.R. § 76.942. The burden of proof is on the cable operator to demonstrate that its proposed rates for BST programming comply with Section 623 of the Communications Act. 47 U.S.C. § 543; FCC Rate Order at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

On its FCC Form 1240, Cox proposed an increase in its BST MPR from \$10.40 to \$10.76 (Exh. Cox-1, at 2, Line A1; at 4, Line I9). Cox also proposed to continue, unchanged, its current operator selected BST rate of \$10.27 (Exh. Cox-2, at 4, Line I10, and at Proposed Rate Structure). Based on our review of Cox's FCC Form 1240, as well as the Company's responses to inquiries, the Department determines that this form was prepared in compliance with federal laws and regulations. As such, we conclude that the BST MPR established by the FCC Form 1240 is just and reasonable and in compliance with applicable law.

IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Department hereby accepts Cox's FCC Form 1240, as filed on December 1, 2006, for the Town of Holland.

Further, upon due notice, hearing, and consideration, the Department hereby accepts Cox's FCC Form 1205, as filed on December 1, 2006, for the Town of Holland.

Further, on review and consideration, the Department orders Cox to file a plan by which the Company will implement any refunds ordered herein. Cox is ordered to file this refund plan with the Department by October 9, 2007.

The attached rate schedule provides Cox's previous and current actual rates, as well as its proposed and approved maximum permitted rates.

By Order of the Department

s/ Sharon E. Gillett
Sharon E. Gillett, Commissioner

Cox
Basic Service Tier Programming and Equipment Rates
Holland,
Massachusetts

Rate Category	Operator Selected Rate Effective August 1, 2005	Previous Maximum Permitted Rate Effective August 1, 2005	Proposed and Approved Maximum Permitted Rate	Operator Selected Rate Effective July 1, 2007
----------------------	--	---	---	--

Basic Tier Programming Rate	\$ 10.27	\$ 10.40	\$ 10.76	\$ 10.27
-----------------------------	----------	----------	----------	----------

Addressable/Digital Converter	\$ 4.95*	\$ 5.93		
HD Converter	\$ 9.95	\$ 10.84		
DVR Converter**	\$ 9.99	\$ 12.39		
HD/DVR Converter	\$ 9.99	\$ 13.51		
Combined in current filing as Addressable Converter			\$ 5.74	\$ 4.98

Non-Addressable Converter	\$ 0.20	\$ 0.20	\$ 0.23	\$ 0.23**
Remote Control	\$ 0.20	\$ 0.30	\$ 0.17	\$ 0.17

Installation of Unwired Home	\$ 55.99	\$ 56.51	\$ 55.98	\$ 55.98
Installation of Prewired Home	\$ 29.99	\$ 33.40	\$ 31.75	\$ 29.99
Additional Outlet at Initial Install	\$ 21.23	\$ 21.35	\$ 25.55	\$ 21.23
Add. Outlet After Initial Install	\$ 30.99	\$ 32.51	\$ 31.46	\$ 30.99
Digital Installation	\$ 49.95	\$ 67.19	\$ 55.98	\$ 49.95

* This rate changed to \$4.95 effective June 24, 2006, from previous rate of \$4.20.

** DVR and Non-Addressable Converters not currently offered in Holland.

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable state and federal laws.