

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY  
CABLE TELEVISION DIVISION**

	)	Docket No. Y-00 INC, Y-00 EQU	
In the Matter of:	)	Date Issued: June 28, 2000	
	)		
A-R Cable	)	Acton, CUID MA 0196	Hudson, CUID MA 0139
Investments, Inc.	)	Ashburnham, CUID MA 0337	Leominster, CUID MA 0017
	)	Ayer, CUID MA 0257	Lexington, CUID MA 0140
Cablevision of Boston, Inc.	)	Bedford, CUID MA 0210	Lincoln, CUID MA 0324
	)	Belmont, CUID MA 0316	Littleton, CUID MA 0294
	)	Boston, CUID MA 0182	Lunenburg, CUID MA 0077
Cablevision of Brookline	)	Boxborough, CUID MA 0289	Lynnfield, CUID MA 0167
Limited Partnership	)	Braintree, CUID MA 0217	Maynard, CUID MA 0146
	)	Brookline, CUID MA 0219	Norwood, CUID MA 0148
Cablevision of	)	Carlisle, CUID MA 0293	Peabody, CUID MA 0119
Massachusetts, Inc.	)	Concord, CUID MA 0270	Stow, CUID MA 0256
	)	Danvers, CUID MA 0279	Sudbury, CUID MA 0255
	)	Fitchburg, CUID MA 0015	Templeton, CUID MA 0127
For a Determination of	)	Framingham, CUID MA 0094	Townsend, CUID MA 0296
Cable Television Rates	)	Gardner, CUID MA 0016	Tyngsborough, CUID MA 0232
	)	Georgetown, CUID MA 0133	Westford, CUID MA 0192
	)	Groveland, CUID MA 0071	Westminster, CUID MA 0230
	)	Haverhill, CUID MA 0031	Westwood, CUID MA 0204

**RATE ORDER**

APPEARANCES: Marti Green, Vice President, Law – Cable and Network Operations  
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- and -

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FOR: CABLEVISION SYSTEMS CORPORATION

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Limited Participant

## I. INTRODUCTION

On October 1, 1999, Cablevision Systems Corporation (“Cablevision” or “the Company”)<sup>1</sup> filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240s and proposed equipment and installation rates on FCC Form 1205s, for all of the above-captioned communities.<sup>2</sup> On April 13, 2000, Cablevision filed amended FCC Form 1205s for its Boston/Brookline and suburban systems. Pursuant to 47 C.F.R. § 76.933(g), Cablevision put its proposed BST programming, equipment and installation rates into effect on January 1, 2000.

The Cable Division held a public hearing on Cablevision’s pending filings in Framingham on April 25, 2000. The City of Boston (“Boston”) and the Town of Lexington (“Lexington”) intervened in this proceeding, and the Towns of Boxborough and Hudson were admitted as Limited Participants. The evidentiary record includes 36 Cablevision exhibits, eight Cable Division exhibits consisting of Cablevision’s responses to our information requests, and responses to record requests posed by the Cable Division, Boston and Lexington. No briefs were filed by any party.

## II. STANDARD OF REVIEW AND BURDEN OF PROOF

The standard under which the Cable Division must review rate adjustments on FCC rate forms is found in the FCC’s rate regulations. Specifically, the regulations provide that the rate regulator shall assure that the rates comply with the requirements of 47 U.S.C. § 543 of the

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<sup>1</sup> On October 1, 1999, Cablevision Systems Corporation operated its Massachusetts cable systems through four legal entities. A-R Cable Investments, Inc. held the licenses for 22 communities: Acton, Bedford, Braintree, Fitchburg, Gardner, Georgetown, Groveland, Hanscom Air Force Base, Haverhill, Hudson, Leominster, Lexington, Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Westminster and Westwood. Cablevision of Massachusetts, Inc. held the licenses for 15 communities: Ashburnham, Ashby, Ayer, Belmont, Boxborough, Carlisle, Concord, Danvers, Framingham, Lincoln, Littleton, Shirley, Townsend, Tyngsborough and Westford. On October 28, 1999, A-R Cable Investments, Inc. was merged into Cablevision of Massachusetts, Inc. This merger did not affect Cablevision’s Boston and Brookline franchises. Cablevision of Boston, Inc. holds the Boston license, and Cablevision of Brookline Limited Partnership holds the Brookline license. All Cablevision communities have requested rate regulation, except for the Towns of Ashby and Shirley, and Hanscom Air Force Base.

<sup>2</sup> Cablevision filed combined FCC Form 1240s for (i) Acton, Hudson, Maynard, Stow and Sudbury; (ii) Ashburnham, Ayer, Boxborough, Carlisle, Concord, Lincoln, Littleton, Townsend, Tyngsborough and Westford; (iii) Bedford and Lexington; (iv) Boston and Brookline; (v) Gardner, Templeton and Westminster; (vi) Georgetown, Groveland and Haverhill; (vii) Leominster and Lunenburg; (viii) Lynnfield and Peabody; and (ix) Norwood and Westwood. Individual FCC Form 1240s were filed for Belmont, Braintree, Danvers, Fitchburg and Framingham. Cablevision filed two FCC Form 1205s, one for its Boston and Brookline system, and one covering all other communities. Pursuant to the FCC’s rate regulations at 47 C.F.R. § 76.923(n)(3), the FCC Form 1205 is filed on the same date the cable operator files its FCC Form 1240.

Cable Television Consumer and Competition Act of 1992 as amended (the “Cable Act”). 47 C.F.R. § 76.922(a). The Cable Division may accept as in compliance with the statute basic service tier rates that do not exceed the “Subsequent Permitted Per Channel Charge” as determined by 47 C.F.R. § 76.922(c), and may also accept equipment and installation charges that are calculated in accordance with 47 C.F.R. § 76.923. In addition, the Cable Division shall only approve rates it deems reasonable under federal law. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates are reasonable and comply with federal regulations, the burden of proof is on the cable operator to demonstrate that its proposed rates for the basic service tier and accompanying equipment comply with 47 U.S.C. § 543 and implementing regulations. 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 (released May 3, 1993) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. Local rate regulators, such as the Cable Division, are required to review the Company’s FCC rate form filings to determine whether the rates are reasonable and in compliance with the Cable Act. 47 C.F.R. §§ 76.922, 76.923, 76.930. The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. FCC Form 1205 Instructions at 5, 11, 12. FCC Form 1205 is prepared on an annual basis using information from the cable operator’s previous fiscal year. Id. at 2. Subscriber charges for equipment shall not exceed charges based on actual costs as calculated in accordance with the FCC’s regulatory requirements. 47 C.F.R. § 76.923(a)(2).

The FCC Form 1240 allows a cable operator to annually update its basic service tier 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 FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(ii)(A); 47 C.F.R. § 76.922(e)(iii)(A). Although cable operators may project for increases in franchise-related costs to the extent they are reasonably certain and reasonably quantifiable, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(ii)(A).

### III. DISCUSSION AND ANALYSIS

The Cable Division addresses two issues with respect to the pending rate forms. First, we address Cablevision’s calculation of its equipments rates applicable to the digital converters and accompanying remote controls, as reported on its amended FCC Form 1205s. Second, we

address Cablevision's calculation of its FCC Form 1240 BST rates with respect to the inclusion of franchise-related costs.

A. Digital Equipment Rates

Cablevision intends to offer digital converters and their associated remote controls in its upgraded communities (RR-CATV-4). Cablevision estimated that it would place in service 28,000 converters and remote controls in Boston and Brookline, and 14,000 in its suburban Massachusetts franchised communities by the end of the year 2000 (Exh. Cablevision-1 through -36, at FCC Form 1205, page 5). While no digital converters have been deployed yet, the Company proposes new equipment rates to become effective upon deployment of the equipment (Exh. Cablevision-1 through -36; RR-CATV-4).

In its rate regulations, the FCC established the method by which operators must calculate the monthly rate for converters, remote controls and other customer equipment. 47 C.F.R. § 76.923(f) and (g). There are two elements of the computation. *Id.* One element of the computation is "UCE," that is, the average annual unit purchase cost including the acquisition price and incidental costs such as sales tax, financing charges, and storage fees incurred up to the time the equipment is provided to the customer. 47 C.F.R. § 76.923(f). The other element is the hourly service charge ("HSC") multiplied by the average number of hours per year to repair or service the equipment ("HR"). *Id.* The actual formula to compute the monthly equipment rate is  $(UCE + (HSC \times HR))/12$ . *Id.* Thus, both the unit purchase cost and the repair and servicing hours are used to compute the monthly rate.

To calculate its monthly rate, the Company combined the capital costs of these units with the costs associated with preparation time, that is, the time needed to place the unit into service (RR-CATV-4). Because Cablevision did not have actual data on the time required to place a digital converter in service, the Company measured the time needed to prepare its new digital converter by comparing it with the time needed to prepare its current analog converter (*id.*). Based on this comparison, the Company included 15 minutes per converter, or 7,000 hours for Boston and Brookline and 3,500 hours for suburban Massachusetts, in its calculation of repair and service hours (Exh. Cablevision-1 through 36, at FCC Form 1205, page 5).

Hence, Cablevision included preparation time on the FCC Form 1205 as repair or service hours (Exh. Cablevision-1 and -36, at FCC Form 1205, page 3, Schedule C, Line B). However, since the preparation of the converter takes place before the converter is supplied to the subscriber, under FCC regulations, any cost the Company seeks to recover associated with the preparation time should be included in the UCE calculation. *See* C.F.R. § 76.923 (f). Accordingly, the Cable Division directs the Company to refile its FCC 1205 consistent with this finding. We recognize that by this method, the Company's initial equipment rate calculation will not include any repair time. Given the preliminary nature of the rate, and the fact that the

Company lacks actual data on which to calculate its rate, the Cable Division concludes that the Company should refile its FCC Form 1205s, showing only one unit of each item of equipment, and including in the computation of the monthly rates only the Company's verifiable per unit capital costs including preparation time. In its next annual FCC Form 1205 filing, Cablevision should be able to provide the Cable Division with actual data regarding costs and hours associated with the maintenance and repair of these units. This data will allow the Cable Division to establish more comprehensive monthly rates.

B. Recovery of Franchise-Related Costs in the BST Rate

1. Boston

On its FCC Form 1240, Cablevision reported a decrease in franchise-related costs between the true-up period and the projected period (Exh. Cablevision-6, Worksheet 7, Line 707). Cablevision explained that the decrease was due to changes in payments made to several public access organizations in Boston (RR-Boston-1). Cablevision subsequently provided amended payment amounts for Line 707, which show a further reduction of payments in the true-up period and an increase of \$700,000 in the projected period, because of the transfer of certain costs relative to the Cablevision Network Fund to the projected period (RR-Boston-2).

In order to understand Cablevision's adjustments to Line 707, the Cable Division reviewed the Boston Renewal License dated May 13, 1998.<sup>3</sup> This license, at § 6.12, Cablevision Network Fund, obligates Cablevision to make \$100,000 available to Boston during the first year of the license, and \$300,000 during each of the next three years. The license further provides that amounts not used during each year may be used in subsequent years. In its amended payment amounts for Line 707, Cablevision removed the Network Fund obligations for the first two years from the true-up period, because these payments apparently were not made, and instead included the entire Network Fund obligation of \$700,000 for the first three years in the projected period calculation (RR-Boston-2).

Unlike other external costs that are included in the projected period, franchise-related costs are not presumed to be "reasonably certain and reasonably quantifiable." FCC, Implementation of Sections of the Cable Television consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Thirteenth Order on Reconsideration, FCC 95-397 (released September 22, 1995) at ¶ 72. Franchise-related costs may be included in the projected period only "to the extent the operator demonstrates that they are reasonably certain and reasonably quantifiable." *Id.* The license provides that any funds not used during a given

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<sup>3</sup> The City of Boston Renewal License is filed as a public document with the Cable Division pursuant to G.L. c. 166A, § 3. The Cable Division hereby takes administrative notice of this license pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).

year be made available in a subsequent year. Cablevision made no such payments in 1998 or 1999 (Boston-RR-2). In the projected period, the amount Cablevision must make available to the city is reasonably certain and quantifiable, ie: \$700,000. The Cable Division concludes that amounts not paid during the true-up period should be removed from the rate. Cablevision should refile its FCC Form 1240 adjusting Worksheet 7, Line 707 for the true-up period to remove franchise-related payments not actually made during that period. Moreover, the refiled FCC Form 1240 should include Network Fund payments on Worksheet 7, Line 707 for the projected period as discussed above.

2. Lexington/Bedford

Cablevision reported \$39,900 in franchise-related costs for both the True-Up and Projected Periods on the Bedford/Lexington FCC Form 1240 (Exh. Cablevision-21, Worksheet 7, Line 707). The Town of Lexington requested that Cablevision explain specifically what comprised this amount (Lexington-RR-2). Cablevision explained that this amount represents the percentage of the total studio programming costs that were related to providing public, educational and governmental access programming in Bedford and Lexington. Specifically, this total covers program director and video technician salary costs and benefits. Finding the operating costs as presented reasonable and hearing no additional concerns from the Town of Lexington, the Cable Division accepts Cablevision's explanation as reasonable.

IV. CONCLUSION

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Cablevision's FCC Form 1240s as filed on October 1, 1999 for Acton, Ashburnham, Ayer, Bedford, Belmont, Boxborough, Braintree, Carlisle, Concord, Danvers, Fitchburg, Framingham, Gardner, Georgetown, Groveland, Haverhill, Hudson, Leominster, Lexington, Lincoln, Littleton, Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Townsend, Tyngsborough, Westford, Westminster and Westwood.

Further, the Cable Division rejects Cablevision's FCC Form 1240 as filed on October 1, 1999 for Boston and Brookline. The Cable Division directs Cablevision to refile the FCC Form 1240 for Boston and Brookline in compliance with this Rate Order, on or before July 7, 2000.

Further, the Cable Division rejects Cablevision's FCC Form 1205s as filed on October 1, 1999 for Acton, Ashburnham, Ayer, Bedford, Belmont, Boston, Boxborough, Braintree, Brookline, Carlisle, Concord, Danvers, Fitchburg, Framingham, Gardner, Georgetown, Groveland, Haverhill, Hudson, Leominster, Lexington, Lincoln, Littleton,

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Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Townsend, Tyngsborough, Westford, Westminster and Westwood. The Cable Division directs Cablevision to refile the FCC Form 1205s in compliance with this Rate Order, on or before July 7, 2000.

The attached schedule provides the proposed and approved maximum permitted basic service tier programming and equipment rates for each community.

**By Order of the  
Department of Telecommunications and Energy  
Cable Television Division**

/s/ Alicia C. Matthews  
**Alicia C. Matthews**  
**Director**





### **APPEALS**

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 1997, c. 164, § 273. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within seven days of the filing of the initial petition for appeal.