

THE COMMONWEALTH OF MASSACHUSETTS

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

) Docket No. Y-99 INC, Y-99 EQU
In the Matter of:) Date Issued: September 29, 1999
)
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
A-R Cable Partners) Bedford, CUID MA 0210 Lincoln, CUID MA 0324
) Belmont, CUID MA 0316 Littleton, CUID MA 0294
Cablevision of Boston, Inc.) Boston, CUID MA 0182 Lunenburg, CUID MA 0077
) Boxborough, CUID MA 0289 Lynnfield, CUID MA 0167
Cablevision of Brookline) Braintree, CUID MA 0217 Maynard, CUID MA 0146
Limited Partnership) Brookline, CUID MA 0219 Norwood, CUID MA 0148
) Carlisle, CUID MA 0293 Peabody, CUID MA 0119
Cablevision of) Concord, CUID MA 0270 Stow, CUID MA 0256
Framingham, Inc.) 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

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I. INTRODUCTION

On October 1, 1998, Cablevision Systems Corporation (“Cablevision” or “the Company”)¹ filed with the Cable Television Division (“Cable Division”)² of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240³ and proposed equipment and installation rates on FCC Form 1205⁴ for all of the above-captioned communities. Pursuant to 47 C.F.R. § 76.933(g), Cablevision put its proposed BST programming, equipment and installation rates into effect on January 1, 1999. On May 7, 1999, Cablevision filed FCC Form 1235s, “Abbreviated Cost of Service Filing for Cable Network Upgrades,” for all of the above-captioned communities.

The Cable Division held public hearings on Cablevision’s pending FCC Form 1240, FCC Form 1205 and FCC Form 1235 filings in Fitchburg on June 9, 1999 and in Boston on August 9, 1999. The City of Boston and the Towns of Brookline, Hudson,

¹ Cablevision Systems Corporation operates its Massachusetts cable systems through five legal entities. A-R Cable Investments, Inc. (formerly A-R Cable Services, Inc.) holds 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. A-R Cable Partners holds the licenses for 14 communities: Ashburnham, Ashby, Ayer, Belmont, Boxborough, Carlisle, Concord, Danvers, Lincoln, Littleton, Shirley, Townsend, Tyngsborough and Westford. Cablevision of Boston, Inc. holds the license for Boston, Cablevision of Brookline Limited Partnership holds the license for Brookline, and Cablevision of Framingham, Inc. holds the license for Framingham. All communities except for the Towns of Ashby and Shirley, and Hanscom Air Force Base have requested rate regulation.

² Formally, “division of community antenna television” under G.L. c. 166A, § 2. It was previously named the “community antenna television commission” under G.L. c. 166A, § 2 before it was merged into the Department of Telecommunications and Energy, effective November 25, 1997.

³ 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. 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. Separate FCC Form 1240s were filed for Belmont, Braintree, Danvers, Fitchburg and Framingham.

⁴ The FCC Form 1205 allows a cable operator to annually adjust its costs of regulated cable equipment and installation. 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. Cablevision filed two FCC Form 1205s, one for its Boston and Brookline system, and one covering all other Massachusetts communities, described as the “suburban Massachusetts” filing.

Lexington, Lunenburg, Sudbury, Townsend and Westford intervened in this proceeding. The evidentiary record includes 36 Cablevision exhibits, 16 Cable Division exhibits consisting of Cablevision's responses to our information requests, and responses to record requests posed by the Cable Division and the Town of Lexington. Briefs were filed by Cablevision and Intervenors Boston and Brookline.

This Rate Order only addresses Cablevision's FCC Form 1205 and 1240 filings. The FCC's regulations at 47 C.F.R. § 76.933(g)(2) require the Cable Division to issue its Rate Order on these filings within 12 months of the date the cable operator filed for its rate adjustments, if it intends to order a refund or a prospective rate reduction. This Rate Order does not address the FCC Form 1235s Cablevision filed on May 7, 1999, because these forms require additional review. The Cable Division intends to rule on the FCC Form 1235s in a separate rate order.⁵

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 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 comply with the 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) ¶ 129; see also 47 C.F.R. § 76.937(a). 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

⁵ Cablevision's FCC Form 1235s were filed more than seven months after its FCC Form 1240s and 1205s. The Instructions to FCC Form 1235 intend the form to be filed independently of any other FCC rate form. See FCC Form 1235, Instructions for Completion of Abbreviated Cost of Service Filing for Cable Network Upgrades (February 1996) at 1-2. Accordingly, it is appropriate for the Cable Division to address Cablevision's FCC Form 1235s in a separate rate order.

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). With respect to equipment and installation costs on FCC Form 1205, subscriber charges shall not exceed charges based on actual costs as determined in accordance with regulatory requirements. 47 C.F.R. § 76.923(a)(2). Accordingly, the Cable Division must determine that upon a showing by Cablevision, the rates are in compliance with the Cable Act and 47 C.F.R. §§ 76.922 and 76.923.

III. DISCUSSION AND ANALYSIS

Generally, the Cable Division finds that Cablevision's FCC Form 1205s and 1240s comply with the applicable federal law. However, several issues with respect to Cablevision's FCC forms are addressed herein. Specifically, we address Cablevision's treatment of labor hours associated with the installation and maintenance of customer equipment on its suburban Massachusetts FCC Form 1205. We also address two issues raised by Cablevision's FCC Form 1240s: whether Cablevision should include the true-up amounts approved by the Cable Division in its previous Rate Order for Cablevision on its current forms, and whether the Company's treatment of the FCC regulatory fee is appropriate.

A. FCC Form 1205, Suburban Massachusetts: Hours Associated with the Installation and Maintenance of Customer Equipment

In its October 1, 1998 filing, Cablevision reported 38,328 hours for total labor hours associated with maintenance and installation of customer equipment and services (Exh. Cablevision-1, FCC Form 1205, at Step A, Line 6). The Company had previously reported, and the Cable Division approved, 57,318 hours. A-R Cable Partners et al, Acton et al., Y-97 EQU (issued September 22, 1997). In explaining the decrease in the number of hours, the Company acknowledged that it had inadvertently omitted certain data concerning installation activities such as connections, reconnections and disconnections from its October 1, 1998 filing (RR-CATV-8). On May 24, 1999, the Company filed an amended FCC Form 1205 that included this data, increasing the total labor hours on Line 6 to 57,491. (id.).

This increase in the total number of hours on Line 6 decreases the hourly service charge ("HSC") calculated on FCC Form 1205, page 4, Step A, Line 7, because the HSC is calculated by dividing the annual customer maintenance and installation costs on Line 5 by Line 6; an increase in hours necessarily decreases the HSC. On the original FCC Form 1205, on page 4, Step A, Line 7, the Company had proposed an HSC of \$45.4525

(Exh. Cablevision-1). On its amended FCC Form 1205, the Company reported an HSC of \$32.2495, a decrease of \$13.20 (RR-CATV-8). Because the HSC is used to determine equipment and installation rates, this results in reduced charges for installations (Step B) and changing service tiers and equipment (Step F). It also results in a decrease in the monthly home wiring charge from \$0.49 to \$0.38 (Step E), a decrease in the monthly leased remote control charge from \$0.29 to \$0.28 (Step C), and a decrease in the monthly leased addressable converter charge from \$1.21 to \$1.19 (Step D). The Cable Division finds the installation and equipment charges reported on the amended FCC Form 1205 for the suburban Massachusetts communities to be reasonable. We direct the Company to charge the rates shown on the amended FCC Form 1205 on a going-forward basis as soon as possible. Because Cablevision on January 1, 1999 had implemented rates based on the higher HSC, the Cable Division hereby directs the Company to pay refunds to suburban Massachusetts subscribers.

B. FCC Form 1240s, All Communities: Transfer of True-Up Information from Previously-Approved Rate Orders

When Cablevision filed FCC Form 1240s for all communities on October 1, 1998, the Company did not incorporate the true-up figures the Cable Division adjusted and approved in A-R Cable Partners et al, Acton et al., Y-97 INC (issued March 26, 1998) (the "1998 Rate Order") (Exhs. Cablevision-1 through 36). Instead, the Company used true-up figures from the FCC Form 1240s initially filed in that rate case (id.). These true-up figures specifically affected Line H14, "Amount of True-Up Being Claimed This Projected Rate Period," and Line I8, "True-Up Segment For Projected Period." Upon request, on May 24, 1999, Cablevision filed amended FCC Form 1240s for every community, incorporating the adjusted true-up numbers the Cable Division had approved in the 1998 Rate Order (RR-CATV-1; RR-CATV-2). The Cable Division finds the adjusted true-up numbers reported on the FCC Form 1240s filed on May 24, 1999 to be reasonable. Cablevision also included on the amended FCC Form 1240 for Boston and Brookline at Line A1, upon request, the \$10.15 current maximum permitted BST rate approved by the Cable Division in its 1998 Rate Order, instead of the \$10.23 rate filed in the initial FCC Form 1240 for that rate proceeding (RR-CATV-7). The Cable Division accepts this change to the Boston and Brookline FCC Form 1240 as appropriate.

C. FCC Form 1240s, All Communities: The FCC Regulatory Fee

The FCC Form 1240s Cablevision filed on October 1, 1998 included the \$0.04 FCC regulatory fee as a component of the BST true-up rate calculation at three locations: Modules D and F, and Worksheet 8 (Exhs. Cablevision-1 through -36). However, the BST rates approved in our 1998 Rate Order, which Cablevision also included in its true-up calculation, did not include the FCC regulatory fee. In response to a record request, the Company amended the FCC Form 1240s it refiled on May 24, 1999 by removing the FCC

regulatory fee from these three locations (RR-CATV-3). We find that the adjusted Modules D and F, and Worksheet 8, on the amended FCC Form 1240s filed on May 24, 1999 to be the appropriate rate-making treatment of the regulatory fee.

IV. CONCLUSION AND ORDER

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 May 24, 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, Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Townsend, Tyngsborough, Westford, Westminster and Westwood.

Further, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Cablevision's FCC Form 1205s as filed on October 1, 1998 for Boston and Brookline, and as filed on May 24, 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.

The Cable Division directs Cablevision to file a refund plan with respect to installation charges in its suburban Massachusetts communities, in accordance with this Rate Order on or before Tuesday, October 12, 1999.

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.