



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY
Cable Television Division**

RATE ORDER

CTV 03-1

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240 and 1205 filed by Comcast Cable Communications, Inc.

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I. INTRODUCTION

Comcast Cable Communications, Inc.¹ (“Comcast” or “the Company”) 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”) Forms 1240 for the communities subject to rate regulation that Comcast serves in Massachusetts.² Comcast also filed a nationwide FCC Form 1205 with proposed equipment and installation rates. Federal regulations allow a cable operator to implement its proposed rates ninety days after the filing date. 47 C.F.R. § 76.933(g). While the rates proposed on these forms were effective beginning July 1, 2003, Comcast chose to delay implementation of rate increases until January 1, 2004. For six Massachusetts communities, the

¹ The formal license held by Comcast Cable Communications, Inc., in each of its Massachusetts communities is under one of the following names: Comcast of Boston, Inc.; Comcast of Brockton, Inc.; Comcast of California/Connecticut/Michigan; Comcast of California/Massachusetts/Michigan/Utah, Inc.; Comcast of Connecticut, Inc.; Comcast of Connecticut, LLC; Comcast of Eastern Connecticut, Inc.; Comcast of Georgia, Inc.; Comcast of Georgia/Massachusetts, Inc.; Comcast of Maine/New Hampshire, Inc.; Comcast of Massachusetts I, Inc.; Comcast of Massachusetts II, Inc.; Comcast of Massachusetts III, Inc.; Comcast of Massachusetts/New Hampshire/Ohio, Inc.; Comcast of Massachusetts/Virginia, Inc.; Comcast of Milton, Inc.; Comcast MO of Delaware, Inc.; Comcast MO Group, Inc.; Comcast of Needham, Inc.; Comcast of New Hampshire, Inc.; Comcast of Southern New England, Inc.; and Comcast Cable Holdings, LLC.

² The regulated communities are listed on the attached Rate Schedule. FCC Forms 1240 for the majority of the regulated municipalities were filed on February 28, 2003. FCC Forms 1240 were filed for Andover, Ayer, Bedford, Boxborough, Chatham, Dennis, Dracut, Harwich, Middleton, Nantucket, North Reading, Townsend, Waltham, Wilmington, and Yarmouth on March 24, 2003. Five separate FCC Forms 1240 were filed for Swansea on April 10, 2003. Amended FCC Forms 1240 were filed for Acton and Natick on April 28, 2003.

proposed BST rates were lower than the current rates being charged, and Comcast implemented the rate decreases in a timely fashion.³ See 47 C.F.R. § 76.922(e)(2).

The Cable Division held a public and evidentiary hearing in its Boston office on September 16, 2003. The City of Lowell and the Towns of Acton, Rehoboth, Somerset, Stoneham, and Westford intervened in this proceeding. The evidentiary record consists of Comcast's rate forms admitted as Comcast Exhibits 1 through 191, Comcast's responses to information requests admitted as Cable Division Exhibits 1 through 31, and Comcast's responses to record requests issued by the Cable Division and the Town of Somerset. The Company also filed a brief on December 3, 2003.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

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 ("FRCs") to the extent they are reasonably certain and reasonably quantifiable; however,

³ Rate changes were implemented in Georgetown, Littleton, Montague, Natick, Stoneham, and Walpole in June 2003.

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

47 C.F.R. § 76.922(e)(2)(ii)(A).

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. Instructions to FCC Form 1205, at 7, 12-13. The FCC Form 1205 is prepared on an annual basis using information from the cable operator's previous fiscal year. Id. at 2. Subscriber charges established by the FCC Form 1205 shall 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 standard under which the Cable Division must review rate adjustments on the 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 Section 623 of the Communications Act of 1934, as amended. 47 U.S.C. § 543; 47 C.F.R. §§ 76.922, 76.923, and 76.930. The Cable Division may accept as in compliance with the statute BST rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by federal regulations. See 47 C.F.R. § 76.922(c). The Cable Division may also accept equipment and installation charges that are calculated in accordance with federal regulations. See 47 C.F.R. § 76.923. In addition, the Cable Division 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), and 76.942.

The burden of proof is on the cable operator to demonstrate that its proposed rates for BST programming and accompanying equipment comply with Section 623 of the

Communications Act of 1934, as amended, 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 (May 3, 1993) at 5716, ¶ 128 (“Rate Order”); see also 47 C.F.R. § 76.937(a).

III. DISCUSSION AND ANALYSIS

A. FCC Forms 1240

i. Implementation of Proposed Rate Changes

The FCC Form 1240 methodology allows a cable operator to adjust its regulated rates on an annual basis, while unregulated rates may be adjusted as deemed appropriate by each cable operator. 47 C.F.R. § 76.922(e)(1). Prior to its merger with Comcast, AT&T Broadband adjusted its regulated rates annually in July and adjusted its unregulated rates annually in January. When the two companies merged in 2002, Comcast maintained the same annual filing schedule and proposed in the current filing a rate adjustment date of July 1, 2003.⁴ However, Comcast later informed the Cable Division that the Company was delaying implementation of these proposed rates until January 1, 2004.

The FCC Form 1240 contains a true-up process that allows a cable operator to compare the revenue it collected during the prior period with the amount of revenue it could have

⁴ Under federal regulations, at least twelve months must pass before the cable operator may implement its next annual rate adjustment. See 47 C.F.R. § 76.922(e)(1). While the majority of the rate forms indicate a proposed rate change date of June 1, 2003, the previous rate changes were implemented on July 1, 2002. Therefore, the earliest Comcast could have implemented its rate adjustments would have been July 1, 2003.

collected. See 47 C.F.R. § 76.922(e)(3). The cable operator may then retain any difference in revenue collected, as well as interest earned on that difference, for use in a future rate filing.

Id. Given that Comcast will be able to retain its undercharged amounts and accrued interest on those undercharged amounts, the Cable Division questioned the decision to delay the implementation of the Company's proposed rates rather than to delay the filing of its rate forms. Further, given the recent merger of AT&T Broadband and Comcast, the Cable Division questioned whether it might have been better for the Company to take additional time prior to filing a rate proposal to coordinate the merging of the two entities' records. Comcast testified that at the time of the filing, the Company had not yet determined when the proposed rates would be implemented (Hearing Audiotape, Side A, at Counter No. 152). Comcast further testified that subsequent to the filing, the Company adopted the policy to implement only one rate change per year, which includes both regulated and unregulated rates (id. at Counter Nos. 160-164). In keeping with this company policy, Comcast determined that it was appropriate to delay the rate adjustments until January 1, 2004 (id.)

Under federal regulations, a cable operator is allowed to implement its proposed rates no less than 90 days following the filing of its forms with the local franchising authority. 47 C.F.R. § 76.933(g). Significantly, there is no federal requirement that rate increases be implemented immediately following this 90-day waiting period.⁵ See e.g., Frontiervision

⁵ Where a proposed BST maximum permitted rate is less than the current BST rate being charged, the cable operator must implement the decrease in a timely manner. 47 C.F.R. § 76.922(e)(2).

Operating Partners, DA 03-3127 (Oct. 10, 2003). Thus, Comcast's decision to delay implementation of its rates is not inconsistent with applicable law.

The Cable Division notes that subscriber confusion has arisen when cable operators implement two or more rate adjustments per year. It is not always apparent to these subscribers which rates constitute regulated rates and which constitute unregulated rates. We find that it is not only reasonable but beneficial for the Company to rework its filing dates to standardize rate adjustment dates. Standardizing the filing dates to provide for one rate increase per year will serve to reduce subscriber confusion and will also allow cable operators to clearly notice the types of rate increases proposed. Comcast testified that it anticipates filing its next rate filing on or before October 1, 2004, and intends to maintain January 1 as its annual rate adjustment date (Hearing Audiotape, Side A, at Counter Nos. 160-164, 175-177). Therefore, the Cable Division expects Comcast's next annual FCC Forms 1240 and 1205 regulated rate filing on or about October 1, 2004. Comcast is directed to notify the Cable Division if it does not intend to adhere to this filing date.

ii. Town of Fitchburg

On the FCC Form 1240 for the Town of Fitchburg ("Fitchburg"), Comcast reported a reduction in programming costs from \$18,340 for the true-up period to \$10,381 for the projected period (Exh. Comcast-51, at Worksheet 7, Line 701). Seeking to verify the accuracy of the changes in programming costs, the Cable Division questioned the reason for the reduction. Specifically, the Cable Division asked what channel movements or changes took place to result in this reduction.

The FCC Form 1240 mechanism requires that cable operators project certain costs, and to submit such projections at least 90 days prior to the projected period. Instructions to FCC Form 1240, at 1-2. Under the FCC's rate regulations, projections are required to be based upon information that is reasonably certain. 47 C.F.R. § 76.922(e)(2)(ii)(A). Otherwise cable operators could, in certain instances, manipulate the form by either under-projecting costs to benefit from the 11.25 percent interest rate on under-recovery or over-project costs thereby achieving a higher BST maximum permitted rate ("MPR") than would otherwise be allowed.

Comcast stated that when it completed the Fitchburg FCC Form 1240, it anticipated entering into a new programming contract for Court TV, which would result in a lower rate (Exh. CTV-7; RR-CTV-7). Comcast further stated that the rate provided for the true-up period was based on the previous Court TV programming contract with AT&T Broadband that had established monthly per-subscriber programming rates of \$0.1250 for 2001, \$0.1350 for 2002, and \$0.1450 for 2003 (RR-CTV-7). Because Comcast anticipated that its new programming contract would result in a lower rate, it used a monthly per-subscriber rate of \$0.0455 and hence reported a reduction in programming costs for the projected period (id.). However, Comcast stated the new programming contract with Court TV was not finalized until June 2003, with the new rate to take effect in January 2004 (id.).

Comcast provided evidence that shows an agreement was reached, albeit later than had been anticipated. The Cable Division accepts that the programming cost projection was made in good faith. As such, the Cable Division finds that Comcast's projections were reasonably

certain under applicable law. The Cable Division, therefore, approves the Fitchburg FCC Form 1240's programming costs as filed.

iii. Town of North Attleborough

As stated above, a cable operator may update its BST programming costs to account for changes in external costs, such as FRCs. 47 C.F.R. § 76.922(e)(2)(ii). As external costs, FRCs may be externalized and passed-through to subscribers. 47 C.F.R. § 76.922(f)(4). On its FCC Form 1240 for the Town of North Attleborough ("North Attleborough"), Comcast included FRCs that increased the monthly BST MPR by approximately \$1.70 per subscriber (Exh. Comcast-115, at Worksheet 7, Line 707, and FRC Worksheet).

Comcast, or its predecessor, has had two other licenses with North Attleborough: the initial license executed in 1981 and a renewal license executed in 1996.⁶ The 1981 license contained provisions requiring the cable operator to operate and staff a PEG access studio, and also to build and maintain an Institutional Network ("I-Net"). North Attleborough Cable Television License (June 9, 1981), at §§ 18, 19, 22, 25, 26. Both the 1996 and 2001 renewal licenses provided for the continued operation and maintenance of the I-Net, and also required the cable operator to continue to operate, maintain, and staff the PEG access studio (RR-CTV-6). Thus, the 1996 and 2001 renewal licenses continued franchise requirements originally contained in the initial 1981 license. The Company proposed to recover all of its

⁶ The North Attleborough cable licenses are public documents filed with the Cable Division pursuant to G.L. c. 166A, § 3. The Cable Division hereby takes administrative notice of these licenses pursuant to G.L. c. 30A, §11(5) and 801 C.M.R. § 1.01(10)(h).

FRCs that resulted from its 2001 license renewal in North Attleborough (id.).⁷ The Cable Division questioned whether, under the FCC's rate regulations, it is appropriate for Comcast to include on the FCC Form 1240 the entire FRCs resulting from the 2001 renewal, or whether Comcast should have included only the incremental costs associated with the renewal license.

In 1992, Congress reinstated BST rate regulation, and in 1993, the FCC implemented rate regulation provisions. 47 U.S.C. § 543; Rate Order at 5636, ¶ 1. Under these federal rules, pre-regulation FRCs are deemed embedded in the rate, and only post-regulation FRC increases may be passed through to subscribers. 47 C.F.R. § 76.922(f)(4); see also Rate Order at 5792, ¶ 257. As such, if a license is renewed following the beginning of regulation, only the increase in FRCs resulting from the renewal may be passed through to subscribers. Id. The Cable Division also has determined that a cable operator may increase its rates to account for franchise obligations only to the extent that the new obligations -- or increases in current obligations -- result in an increase in franchise requirement costs. Time Warner Cable, Y-97 INC (1998) ("Time Warner"). The Cable Division clarified that existing services do not become new services upon franchise renewal. Time Warner at 15, citing Letter from Meredith J. Jones, Chief of the FCC's Cable Services Bureau, to Julian J. Bussgang of the Lexington, Massachusetts Cable TV and Communications Advisory Committee (Nov. 13, 1995). In addition, the Cable Division noted that under federal rules, if there is an increase in franchise requirements, a cable operator may recoup any incremental costs up to the

⁷ Comcast included, on its rate filing, the portion of FRCs relating to the current projected period.

amount of the increase. Time Warner at 14, citing Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, MM Docket No. 92-266, FCC 95-397 (Sept. 22, 1995) at ¶ 132. Therefore, under federal rules and Cable Division precedent, where a license renewal has occurred after the reinstatement of rate regulation, only changes in FRCs resulting from the new license may be passed through to subscribers.

Comcast argued that at the time of each franchise renewal, any existing FRCs from the prior license are “reset to zero,” and, therefore, Comcast is entitled to full recovery of all FRCs it occurs. We are not persuaded by Comcast’s “zeroing out” argument, particularly in light of the unambiguous federal regulations and our decision in Time Warner. Further, the Company did not submit any credible evidence to support its contention that FRCs were either fully recovered or written off at renewal. All things being equal, evidence of a corresponding rate reduction is mandatory. The Company’s contention is simply incompatible with the applicable rules that provide that rates must adjusted annually to reflect any decreases in external costs. 47 C.F.R. § 76.922(e)(2)(ii)(B). North Attleborough became subject to rate regulation on November 10, 1993. See TCI Cablevision, Y-93 (1994). The Cable Division, therefore, finds that because the 1981 license was executed prior to regulation, any costs related to franchise requirements contained in that license are deemed to be embedded in the rate.

With respect to the 1996 renewal license executed post regulation, we find that only the portion of FRCs representing new costs, or increases to existing costs, could have been externalized. We find, however, that these increases in FRCs were not included on any rate

filings during the term of the 1996 renewal license and thus were not recovered from subscribers.⁸ Because that license has expired, Comcast may not now collect any FRCs due under the 1996 renewal license. However, since those costs are not embedded, any increases in costs incurred as a result of the 2001 renewal license should be measured against the original 1981 license as that license contains the FRCs that are embedded in the rate. Therefore, Comcast may recover the difference between the embedded costs that were in existence on the date of regulation and any increase in its FRCs during the term of the current license.

Accordingly, we find that Comcast must reduce the FRCs reported on the current North Attleborough FCC Form 1240 by the amount of any FRCs that were embedded in the BST rate as of the starting date of regulation, November 10, 1993. We further find that only the increase in FRCs above these embedded rates may be passed through to subscribers. We recognize that Comcast may have difficulty determining the actual FRCs in North Attleborough on November 10, 1993. Nevertheless, in this same rate proceeding, Comcast expressed an ability to determine the FRCs in Somerset at the beginning of rate regulation, and we expect that Comcast would have the same ability in this situation (see RR-CTV-12). The Cable Division directs Comcast to resubmit its FCC Form 1240 for North Attleborough, with its FRCs adjusted in accordance with this Rate Order and supporting analysis.

iv. Town of Somerset

⁸ Where a cable operator seeks to recover FRCs, those costs from franchise requirements that occur post regulation must be affirmatively included on the external cost section of the FCC Form 1240. 47 C.F.R. § 76.922(f)(4); FCC Form 1240, at Worksheet 7, Line 707.

a. RTPI

At the rate hearing, the Town of Somerset (“Somerset”) indicated that it was receiving complaints from subscribers that Comcast was no longer offering RTPI, an international Portuguese station, on the BST, as it had been moved to the cable programming services tier (Hearing Audiotape, Side C, at Counter Nos. 111-124). Somerset questioned the appropriateness of moving the channel from the BST. Specifically, Somerset stated that according to RTPI representatives, the channel is offered free to cable operators and is to be carried on the BST (id. at Counter Nos. 127-137).

In response, Comcast stated that it would move RTPI to the BST in October 2003 (RR-Somerset-1). Comcast did not, however, provide any rationale for its initial movement from the BST or its return to the BST. The Cable Division recognizes that cable operators have a First Amendment right to select the programming services offered to subscribers. Nonetheless, the Cable Division may evaluate the impact of such channel movements on the BST rate. As such, in reviewing Comcast’s next annual rate filing submitted for Somerset, the Cable Division will pay particular attention to any changes in programming costs and costs relating to channel movements and deletions. We encourage Somerset to petition to intervene in the next proceeding to present documentary evidence supporting its contention that there are no costs associated with carrying RTPI on the BST.

b. Franchise Related Costs

Comcast's FCC Form 1240 for Somerset includes no FRCs in its rate calculation at Worksheet 7, Line 707, for either the true-up or projected periods (Exh. Comcast-144).

Accordingly, no FRCs in Somerset are identified as components of its BST rate. However, since Somerset's license with Comcast expired on October 2, 2003, and Somerset is in the process of negotiating a renewal license, Somerset raised the issue of the appropriate manner in which certain renewal FRCs may be passed-through to subscribers.

Somerset granted an initial license to Comcast's predecessor in 1981. The Town subsequently renewed the license in 1996. Both the 1981 initial license and the 1996 renewal license provided that the cable operator fund PEG access channels and an I-Net (RR-CTV-12, at 5-7). Somerset contended that only incremental costs above existing franchise costs may be externalized (Somerset Brief at 1). The Town argued that its franchise obligations have constituted franchise costs for Comcast and its predecessors for the past 22 years. According to Somerset, the franchise obligations it seeks to impose on Comcast are existing services that do not become new services under a renewal license (Somerset Response at 2, citing Time Warner at 15). Somerset sought a Cable Division ruling on the issue in the context of this rate proceeding (id.).

The Company countered with many of the same arguments it presented with respect to North Attleborough (RR-CTV-12). Comcast further argued that none of its predecessors had included FRCs in Somerset's rate calculations, dating back to the first FCC Form 1200 where the costs would have been reported (id. at 8, n.4). In cases where the Company has acquired a system from another cable operator, and where that cable operator had not included FRCs in its rates, the Company has taken the position that it could include these costs on its rate form (Hearing Audiotape, Side C, at Counter Nos. 35-50). Alternatively, Comcast argued that if the

Cable Division disagreed with its position that the FRCs were reset at zero when the 1981 license expired, at a minimum the Company should be able to recover the 1996 license's FRCs to the extent that these costs were not included in Somerset's BST rate on October 22, 1993, the initial date of rate regulation for Somerset (RR-CTV-12, at 10).

Somerset does not raise an issue ripe for resolution in the pending rate proceeding. Unlike the situation in North Attleborough, in this proceeding, the Company has not proposed to include any FRCs in the current BST. As such, the reasonableness of the recover of FRCs is not at issue here. Any ruling we would provide the parties would be advisory in nature, and we are not inclined to do so in a formal adjudicatory proceeding. Our discussion in North Attleborough above should provide substantive guidance.

v. Town of Swansea

On January 17, 2003, the Town of Swansea ("Swansea") formally requested that the Cable Division regulate its BST rates.⁹ Before that date, Swansea's BST programming and equipment rates had not been subject to regulation. On January 24, 2003, the Cable Division notified Comcast that Swansea had requested rate regulation and instructed them to file the appropriate rate schedule. Letter from Alicia C. Matthews, Director, Cable Television Division, to Mark Reilly, Vice President of Law and Public Policy, AT&T Broadband (Jan. 24, 2003).

⁹ While Massachusetts law and regulation provide that the Cable Division may regulate rates for a municipality "upon its own motion," the Cable Division's longstanding policy is to exercise its authority only upon a municipality's request to do so. See G.L. c. 166A, § 15; 207 C.M.R. § 6.04.

Under federal regulation, a cable operator becoming subject to rate regulation must file an initial FCC Form 1200 with the local franchising authority. 47 C.F.R. § 76.922(b)(6). The FCC Form 1200 allows the cable operator to justify the reasonableness of its initial rates. Id. Once the initial FCC Form 1200 has been filed, the cable operator may file an FCC Form 1210 on a quarterly basis or an FCC Form 1240 on an annual basis to justify changes to those rates. See 47 C.F.R. § 76.922.

Comcast's predecessors had filed regional FCC Forms 1200, 1210, and 1240. See TCI Cablevision of New England, Y-94 BNK, Y-95 EQU, Y-95 INC (1996); CoxCom, Inc., Y-96 INC, Y-96 EQU (1997); Cox Communications, Inc., Y-97 INC, Y-97 EQU (1998); Cox Communications, Inc., Y-98 INC, Y-98 EQU (1999); MediaOne Enterprises, Inc., Y-99B INC, Y-99B EQU (2000). The regional forms contained cost, channel, inflation, and subscriber data for Swansea. Hence, Comcast was not required to create an initial FCC Form 1200 or FCC Form 1210 for the current rate proceeding. In fact, Swansea had been included on a regional FCC Form 1240 filing as recently as the period beginning November 1, 1998 (Exh. Comcast-155A; see Cox Communications, Inc., Y-98 INC, Y-98 EQU at 3 (1999)). Therefore, the Cable Division required that Comcast only file FCC Forms 1240 for the periods commencing January 1, 2000.¹⁰

¹⁰ Due to a transfer of cable operators in 1999, the projected period changed from November 1 to January 1 and then to June 1.

On April 10, 2003, Comcast submitted five FCC Forms 1240 for Swansea. Four of the FCC Forms 1240 are for the periods commencing on January 1, 2000,¹¹ June 1, 2001, June 1, 2002, and June 1, 2003, and contain information applicable only to Swansea (Exhs. Comcast-155B through -155E). Comcast also resubmitted an FCC Form 1240 for the period beginning on November 1, 1998, which contains the last BST MPR approved by the Cable Division on the regional filing (Exh. Comcast-155A; see Cox Communications, Inc., Order on Refund Plan, Y-98 INC, Y-98 EQU at 3 (1999)).

The January 1, 2000, FCC Form 1240 appropriately reflected a rate calculation using the previously-approved FCC Form 1240's BST MPR (Exh. Comcast-155B, at 2, Line A1; see also Exh. Comcast-155A, at 5, Line I9). However, the Cable Division noted that Comcast had included true-up adjustments on these forms, even though Swansea's BST rates were not yet subject to the regulatory process. The true-up mechanism allows cable operators to calculate projected costs against actual costs and collect or refund the difference.

47 C.F.R. § 76.922(e)(3). As such, the Cable Division questioned the appropriateness of including the true-up adjustment amounts.

¹¹ For this projected period, then cable operator Cox Communications, Inc., initially filed a combined FCC Form 1240 for Somerset and Swansea. Following the transfer of the Somerset and Swansea licenses to MediaOne Enterprises, Inc., on August 30, 1999, MediaOne Enterprises, Inc., filed separate forms for Somerset and Swansea, not realizing that Swansea was not subject to rate regulation at that time. See MediaOne Enterprises, Inc., Y-99B INC, Y-99B EQU, at 1, n.2 and 10 (2000). The Swansea form is consistent with the FCC Form 1240 for the same period submitted in this proceeding, with appropriate adjustments for inflation and copyright actual costs.

The Company admitted that a true-up calculation was not required on the Swansea rate forms (Hearing Audiotape, Side B, at Counter Nos. 314-319). Comcast submitted a revised FCC Form 1240 for Swansea for the projected period commencing June 1, 2003, that reflected no true-up adjustment (RR-CTV-11). On this form, the Company used as its starting rate the actual BST rate in Swansea of \$8.97 (id. at Attachment D at 2, Line A1). As a result, the Company established a BST MPR of \$9.13 (id. at Attachment D at 4, Line I9).

Comcast did not provide any revised FCC Forms for the projected years 2000, 2001, and 2002. Therefore, the Cable Division analyzed the unrevised FCC Forms 1240 as originally submitted to determine whether removal of the true-up would establish a BST MPR less than Swansea's actual BST rate. In reviewing the forms, the Cable Division finds that the Company reported negative true-up on the first form, and positive true-up on the remaining two forms, including a positive true-up of \$1.18 on the third form (Exhs. Comcast-155B, -155C and -155D). We determine that if these forms were adjusted to remove all true-up, the BST MPR would still exceed Swansea's actual current rate of \$8.97. The Cable Division finds that the current rate of \$8.97 is reasonable, and therefore is the appropriate rate to use in preparing the current rate form. Thus, the Cable Division accepts that the revised Swansea FCC Form 1240 is in compliance with applicable law and the resulting rate is reasonable.

vi. Town of Winchendon

On the initial FCC Form 1240 filed for the Town of Winchendon ("Winchendon"), Comcast reported a current BST MPR of \$7.68 and proposed a new BST MPR of \$8.71 (Exh. Comcast-186, at 4, Line I9). As a starting point to a rate calculation, the FCC requires

the cable operator to enter, on the current form, the BST MPR approved on its previous form. FCC Form 1240, at 2, Line A1; Instructions to FCC Form 1240, at 12. The Cable Division had previously approved a BST MPR in Winchendon of \$6.63, and therefore, we questioned Comcast's use of a BST MPR of \$7.68 as the starting point. See AT&T Broadband, Order Approving Compliance Filing, CTV 02-2, at 5 (April 23, 2003).¹²

Comcast revised its FCC Form 1240 using the previously approved BST MPR of \$6.63 as the correct initial rate (RR-CTV-10, at Attachment B, at 2, Line A1).¹³ The revised FCC Form 1240 resulted in a proposed BST MPR of \$6.14 (id. at Attachment B, at 4, Line I9). In reviewing the revised FCC Form 1240, the Cable Division determines that the rate calculations in RR-CTV-10 are done in a manner consistent with federal law and regulations. Therefore, we find that the revised FCC Form 1240 for Winchendon is reasonable and in compliance with applicable law.

Since the Company had erred with respect to the correct MPR on the FCC Form 1240, the Cable Division questioned whether refunds ordered in the prior rate proceeding had been properly provided to affected subscribers. See AT&T Broadband, Order On Compliance Filing, CTV 02-2, at 5 (April 8, 2003). Comcast testified that due to a billing error, only a portion of the affected subscribers received the refund (RR-CTV-10). The situation was

¹² In the previous rate proceeding, AT&T Broadband had initially proposed a BST MPR of \$7.68; the Cable Division rejected this proposal and established a BST MPR of \$6.63. AT&T Broadband, CTV 02-2, at 9 (Feb. 19, 2003).

¹³ Comcast had previously submitted a revised FCC Form 1240 in response to an information request; however, when preparing Worksheet 8 of the form, the Company failed to account for the refunds paid during the true-up period (see Exh. CTV-22).

further exacerbated by the fact that the Company had proposed on its initial FCC Form 1240 a BST MPR that was higher than the current rate being charged.¹⁴ At the Cable Division's directive, Comcast filed two refund plans. The first refund plan applies to those subscribers who did not receive refunds due to the billing system error (id. at Attachment A). Comcast proposes to provide these subscribers with a refund of \$6.78, equivalent to \$0.14 per month for the period between July 2002 and May 2003, and \$0.63 per month between June 2003 and January 2004, plus appropriate interest (id.). The second refund plan applies to those subscribers who did receive refunds, but were nevertheless overcharged beginning June 2003 (id. at Attachment C). Comcast proposes to provide these subscribers with a refund of \$5.14 for the period between June 2003 and January 2004 (id.). As the Company is implementing rate changes on the January 1, 2004, billing cycle, the Company proposed paying refunds to all Winchendon subscribers on this same billing cycle (id.). We find that the Winchendon refund plans have been properly calculated, and will appropriately return overpayments to current subscribers. Further, providing the refunds on the same billing cycle as the implementation of the lower BST rate should alleviate subscriber confusion by allowing the Company to include a single comprehensive and clear bill message to its subscribers. Accordingly, the Cable Division approves the two refund plans as filed.

¹⁴ Comcast lowered rates in the municipalities where the proposed BST MPR was lower than the current rate being charged in the appropriate time period, meaning at the start of the projected period. However, due to use of an incorrect BST rate in Winchendon, the Company was not immediately aware that the town should be included in those municipalities receiving rate decreases.

B. Nationwide FCC Form 1205

In order to justify its equipment and installation rates in its Massachusetts communities, Comcast filed with the Cable Division a nationwide FCC Form 1205 for the fiscal year ending December 31, 2002 (Exh. Comcast-191). Federal law and regulations allow cable operators to aggregate equipment and installation costs and file the FCC Form 1205 on a franchise, system, regional, or company level. 47 U.S.C. § 543(a)(7); 47 C.F.R. § 76.923(c)(1). Comcast has chosen to aggregate its equipment and installation costs at the company level.

In reviewing the FCC Form 1205, the City of Lowell (“Lowell”) raised concerns regarding the costs of converters, especially as those costs affect BST-only subscribers. Lowell also questioned the appropriateness of the depreciation method used by Comcast. The Cable Division noted that Comcast reported a decrease in converters in service while at the same time, the Company’s gross book value and accumulated depreciation expense for its converters increased. These concerns are discussed below.

i. Converter Lease Rates

At the hearing, Lowell expressed concerns regarding the calculation of rates charged to BST-only subscribers (Hearing Audiotape, Side A, at Counter Nos. 463-482). Lowell questioned whether subscribers were being pressured to lease more expensive types of converters (id. at Counter No. 463). In particular, Lowell questioned whether BST-only subscribers were being forced to relinquish their analog converters and lease enhanced converters, paying converter lease rates at the same level as those subscribing to CPST, premium programming, and digital programming (Id. at Counter No. 482).

The Cable Division regulates rates for all equipment used to receive the BST, regardless of whether that equipment is also used to receive unregulated tiers of services.

47 U.S.C. § 543(b)(3); 47 C.F.R. § 76.923(a)(1). In so regulating, the Cable Division establishes two separate converter lease rates: one converter lease rate for subscribers who receive BST-only and one converter lease rate for subscribers who purchase additional tiers of service, such as CPST, digital, and premium programming.¹⁵ These lease rates are listed on the FCC Form 1205 as Converter 1 and Converter 2, respectively.

See 47 U.S.C. § 543(a)(7); 47 C.F.R. § 76.923(c)(2).

Comcast testified that in order to provide enhanced services to subscribers, the Company was moving toward a digital platform (Hearing Audiotape, Side B, at Counter Nos. 374-376). The Company further stated that it has no plans to purchase additional analog converters in the future and had, in fact, written off a number of analog units from the Company's books in 2002 (id. at Counter No. 401). Comcast stated that it is also phasing out first generation digital converter boxes in part because those converter boxes are no longer able to provide the services that Comcast would like to offer its subscribers (id. at Counter No. 378). Comcast also stated that if a subscriber were receiving BST-only and needed a new converter, the Company would install a digital converter if an analog converter were not available (id. at Counter No. 485).¹⁶ Comcast further testified that the converter cost paid by

¹⁵ To the extent that HDTV converters are used to receive the BST, such converters are subject to rate regulation and may be aggregated into the second category of converters.

¹⁶ BST-only subscribers are not required to lease converter boxes; however, some choose
(continued...)

the subscriber would be based on the programming purchased so that a BST-only subscriber would pay the lower BST-only converter lease rate (*id.* at Counter No. 534).

Historically, analog converters were provided to those subscribing only to the BST. However, under federal law and regulation, a BST-only converter defines a price point rather than the technical type of a converter. 47 U.S.C. § 543(a)(7); 47 C.F.R. § 76.923(c)(2). Hence, the distinguishing factor in deriving a BST-only converter price is that the subscriber has purchased only the BST, not that the converter is able to receive only analog programming. Comcast may choose to install a digital converter for a BST-only subscriber requesting a converter, but that subscriber must be billed at the lower lease rate. Based on Comcast's testimony, rate cards, and FCC Form 1205, we find that Comcast is complying with federal requirements and appropriately maintaining a separate converter lease rate for subscribers purchasing BST-only. We address the reasonableness of the lease rates below. The Cable Division encourages subscribers to use the information provided in this Rate Order to make decisions regarding the lease of equipment based on individual needs and financial considerations.¹⁷

¹⁶(...continued)

to do so because their televisions are not capable of receiving all of the BST channels or in order to purchase pay-per-view shows.

¹⁷ On October 9, 2003, the FCC released rules to ensure the compatibility of consumer electronics equipment and cable television. Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-225, CS Docket No. 97-80 (Oct. 9, 2003). In general, the rules codify an agreement

(continued...)

ii. Gross Book Value and Depreciation Expense of Converters

In its current filing, Comcast reported a drop in the number of converters in service (Exh. CTV-191, at 3; CTV 02-2, Exh. AT&T Broadband-185).¹⁸ At the same time, Comcast's gross book value and accumulated depreciation expense for its converters increased (id.). Specifically, converters in service decreased by over 1.68 million while gross book value for converters increased by \$447,254,512 and accumulated depreciation expense increased by \$674,385,196 (id.). In reviewing the filing, the Cable Division questioned the increase in both gross book value and depreciation expense given the removal of over 1.68 million of units in service. In addition, the Cable Division questioned Comcast's use of a three-year depreciable life calculation. Lowell also questioned the appropriateness of the depreciation method used by Comcast.

In responding to the Cable Division's concerns regarding the increase in gross book value, Comcast stated that it was continuing to replace older analog converters with digital converters (Exh. CTV-29). Comcast testified that it was also replacing first generation digital converters because those models were restricting the Company's ability to provide subscribers

¹⁷(...continued)

between cable operators and manufacturers to provide manufacturers with technical specifications necessary to build digital-ready televisions, known as "plug-and-play digital televisions." Id. Subscribers who purchase these plug-and-play digital televisions will be able to connect the television directly to the cable outlet and receive analog and many digital stations without the need for a converter. Id.

¹⁸ As stated previously, Comcast proposes two converter lease rates: Converter 1 is for subscribers who receive BST-only and Converter 2 is for subscribers who purchase additional tiers of service, such as CPST, digital, and premium programming.

with available features (Hearing Audiotape, Side B, at Counter No. 473). Comcast noted that while there were fewer units in service, “the types of converters now in service are more technologically advanced and more expensive than the older models” (Exh. CTV-29).

Congress has acted to require broadcasters to transfer to digital technology, and the FCC has adopted rules to spur the digital transition, not only for broadcasters but for cable operators as well. See e.g., 47 U.S.C. 336; 47 U.S.C. § 544A; Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment: Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-225, CS Docket No. 97-80 (Oct. 9, 2003). As such, the Cable Division acknowledges the inevitability of Comcast’s transfer to a digital platform. In addition, the Cable Division accepts Comcast’s analysis that the gross book value has increased in the current period due to the increased cost of second generation digital converters. We also note that even if all equipment from last year’s FCC Form 1205 was carried forward, due to the addition of more expensive converters, the annual increase in operating costs, and the use of a shorter depreciable life method, the MPR BST would be no lower than the MPR BST as calculated on the prior form. As such, it would still exceed the current operator selected rate.

With respect to the Cable Division’s and Lowell’s concerns regarding the depreciation expense, Comcast testified that the increase in depreciation expense was a reflection of the full impact of the accelerated depreciation of the useful lives of new converters from five years to three years in March of 2000 (Exh. CTV-29). Because a shorter depreciable life allows a

higher percentage of the unit cost to be recovered each year, the period over which converters are depreciated affects the monthly maximum permitted lease rate. This is especially the case where more expensive digital and HDTV converters are introduced and averaged along with the cost of analog and addressable units. In explaining the use of a depreciable life of three years for its converters, Comcast noted that on its FCC Form 1205, it used AT&T Broadband data rather than using data derived from the merged entities of Comcast and AT&T Broadband (Exh. Comcast-191, Preparation Documentation).¹⁹ Comcast stated that while it typically uses a six-year depreciable life, because AT&T Broadband data was used and AT&T Broadband had used a three-year depreciable method in the past, Comcast chose for this rate filing a depreciable life of three years (Hearing Audiotape, Side B, at Counter Nos. 383, 393). Comcast testified that it intends to use a six-year depreciable life on its next annual filing now that the merger of Comcast and AT&T Broadband has been completed (*id.* at Counter No. 398).

We note that although the three-year depreciable life method raises the maximum permitted lease rates, the Company has chosen not to raise its BST-only converter lease rates and to limit its addressable and digital converter lease rate increase to 25 cents. The proposed MPR for BST-only converters is \$7.92, while the Company is charging \$2.00. The proposed

¹⁹ Comcast stated that the data was obtained from the records of AT&T Broadband at the company level, as of October 31, 2002, which represents the last full month prior to the merger of Comcast and AT&T Broadband. The data was then annualized by dividing by 10 and multiplying by 12 in order to appropriately reflect a full year of data. The FCC reviewed Comcast's proposed method and found it to be reasonable and not inconsistent with federal rules and policies. FCC Letter to Peter H. Feinberg, Esq., 18 FCC Rcd 2797, DA 03-556 (Feb. 26, 2003).

MPR for addressable and digital converters is \$9.67, while the Company is charging \$5.20 for digital and addressable converters.²⁰ The prior rate filing produced maximum permitted BST rates of \$5.66 for BST-only converters and \$7.17 for all other converters. We find that Comcast's FCC Form 1205 is reasonable and in compliance with applicable. We therefore accept Comcast's FCC Form 1205 as filed.

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 Comcast's FCC Forms 1240 as originally filed for Acushnet, Agawam, Amherst, Andover, Ashburnham, Ashland, Attleboro, Avon, Ayer, Barnstable, Bedford, Bellingham, Belmont, Berkley, Bernardston, Beverly, Billerica, Blackstone, Boxborough, Boxford, Braintree, Bridgewater, Brockton, Brookline, Buckland, Burlington, Cambridge, Canton, Carlisle, Chatham, Chelmsford, Chelsea, Chester, Clinton, Cohasset, Concord, Conway, Danvers, Dartmouth, Deerfield, Dennis, Dighton, Dover, Dracut, East Bridgewater, Eastham, Easton, Erving, Everett, Fairhaven, Fall River, Fitchburg, Foxborough, Framingham, Franklin, Freetown, Gardner, Georgetown, Gill, Granby, Granville, Greenfield, Groveland, Hamilton, Hanover, Hanson, Hardwick, Harwich, Hatfield, Haverhill, Hingham, Holbrook, Holliston, Holyoke, Hopedale, Hopkinton, Hudson, Hull, Huntington, Ipswich, Lakeville, Lancaster, Lawrence,

²⁰ MPRs calculated on the FCC Form 1205 are based on a "use or lose" scenario, meaning that if the cable operator does not charge the full MPR, it may not bank it for use in a future rate period. Hence, Comcast will not be able to make up for these undercharges in future rate filings.

Leominster, Lincoln, Littleton, Longmeadow, Lowell, Lunenburg, Lynn, Lynnfield, Malden, Mansfield, Marblehead, Marion, Marlborough, Mattapoisett, Maynard, Medfield, Medford, Medway, Melrose, Mendon, Methuen, Middleborough, Middleton, Milford, Millis, Milton, Monson, Montague, Nahant, Nantucket, New Bedford, Newbury, Norfolk, North Andover, North Reading, Northampton, Northfield, Norton, Norwell, Norwood, Orleans, Palmer, Peabody, Pelham, Phillipston, Plainville, Provincetown, Quincy, Randolph, Raynham, Reading, Rehoboth, Revere, Rochester, Rowley, Salem, Saugus, Scituate, Seekonk, Sharon, Shelburne, Sherborn, Somerset, South Hadley, Southwick, Springfield, Stoneham, Stoughton, Stow, Sudbury, Sunderland, Swampscott, Taunton, Templeton, Tewksbury, Topsfield, Townsend, Truro, Tyngsborough, Upton, Wakefield, Walpole, Waltham, Ware, Wareham, Warren, Watertown, Wayland, Wellesley, Wellfleet, Wenham, West Bridgewater, West Newbury, West Springfield, Westfield, Westford, Westhampton, Westminster, Weston, Westwood, Weymouth, Whitman, Williamsburg, Wilmington, Winchester, Winthrop, Wrentham, and Yarmouth.

Further, upon due notice, hearing, and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations Comcast's amended FCC Forms 1240 as submitted on April 28, 2003, for Acton and Natick.

Further, upon due notice, hearing, and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations Comcast's FCC Form 1240 as resubmitted on September 26, 2003, as RR-CTV-11 for Swansea.

Further, upon due notice, hearing, and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations Comcast's FCC Form 1240 as resubmitted on September 26, 2003, as RR-CTV-10 for Winchendon.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations Comcast's refund plans as submitted as RR-CTV-10, Attachments A and C, for Winchendon.

Further, upon due notice, hearing, and consideration, the Cable Division hereby rejects Comcast's FCC Form 1240 as originally filed for North Attleborough. The Cable Division directs Comcast to refile its FCC Form 1240 for North Attleborough in compliance with this Rate Order, on or before Thursday, January 15, 2004.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations Comcast's FCC Form 1205 as originally filed for all of its regulated communities.

Further, upon due notice, hearing and consideration, the Cable Division hereby orders Comcast to comply with all other directives contained herein.

The attached Rate Schedule provides, for each community, Comcast's current and proposed BST programming and equipment rates, as well as its proposed and approved maximum permitted BST rates. With respect to installation rates, the Rate Schedule also provides the current and proposed hourly service charge as well as the proposed and approved maximum permitted hourly service charge.

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

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

Issued: December 23, 2003

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. 2002, c. 45, § 4. 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.