

**Before the  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE  
Commonwealth of Massachusetts**

In the Matter of:

Comcast Cable Communications, Inc.

For Determination of Cable Rates

Docket No. D.T.C. 07-6

Dated Issued: November 17, 2008

**PETITION FOR PARTIAL RECONSIDERATION**

Comcast Cable Communications, Inc., on behalf of its affiliates and subsidiaries (“Comcast” or the “Company”), hereby seeks partial reconsideration of the Rate Order, adopted by the Department of Telecommunications and Cable (the “Department”) on November 17, 2008. Comcast is expressly limiting this Petition to the Department’s treatment of the franchise-related costs (“FRCs”) reported for Medway. The Company respectfully submits that the Department overstepped its jurisdictional authority in this one aspect of the Order by requiring a refund extending well beyond the well-established one-year limit. Under the circumstances, Comcast is compelled to contest the temporal scope of the Department-mandated refund. At the same time, Comcast is prepared to voluntarily “true-up” its earlier error through the Form 1240 calculation, thereby reducing the “maximum permitted rate” (“MPR”) now applicable to Medway customers. In this way, the rate form error would be remedied without the Department itself violating FCC regulations.

The Company does not dispute that that its prior rate filings for Medway mistakenly included an FRC for a local Access studio coordinator. Indeed, Comcast acknowledges that the studio coordinator position was eliminated in 1998 in connection with the franchise renewal, and

it concedes that the associated FRC costs should have been removed at that time. (Upon discovering the issue, Comcast itself removed the studio coordinator costs from the Form 1240 that is the subject of the contested Order.)

The problem with the Department's Order is not its substantive treatment of the Medway FRCs, but its assertion that the treatment should apply retroactively to 1998. The resulting refund order is irreconcilable with controlling FCC rules and the regulatory certainty and stability those rules were designed to provide.

First, Section 76.942(g) of the FCC rules establishes a strict limit on the temporal scope of rate refunds. It plainly states, "An operator's liability for refunds is limited to a one-year period." 47 C.F.R. § 76.942(g). The FCC has, in fact, rejected local rate orders that violate this simple rule. *See, e.g., Community TV Corporation (Alton, New Hampshire)*, 10 FCC Rcd 357 (1995)(overturning a 14 month refund order). Accordingly, the Department should reconsider its Order and limit the scope of the mandated refund to a 12 month period.<sup>1</sup>

Second, the rate refund limit set forth in Section 76.942(g) is bolstered in this case by the strict time limit imposed on local rate review under Section 76.933(g) of the FCC rules. This rule provides that "the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing." 47 C.F.R. §76.933(g)(2). The FCC adopted this rule "because operators need to have certainty with respect to their liability for refunds." *Thirteenth*

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<sup>1</sup> Comcast does not believe any refund is appropriate in this case, but would not contest a refund reduced to a 12 month period.

*Order on Reconsideration*, 11 FCC Rcd. 388 at ¶ 92 (1995). The Order clearly violates the letter and spirit of this closure rule by effectively reopening rate filings made throughout the past decade.<sup>2</sup>

Comcast appreciates that the Department was previously unaware of the factual error in the Company's Medway filing. The mistake, however, was inadvertent on Comcast's part, and Medway itself could have raised the issue in the intervening decade of rate review. Not only does the Order, as currently drafted, violate the FCC's well-reasoned "statute of limitations" on cable rate matters, it also produces an inequitable result. Comcast's basic service rate in Medway today is well below the applicable MPR. **In fact, Comcast's FRC reporting error did not result in the Company collecting more money from Medway customers over the last decade than it was legally entitled.** Even if the FRC error had been removed from the MPR calculation in 1998, the resulting MPRs, in aggregate, still would have exceeded the Operator Selected Rates. Comcast should not be penalized for a rate form error that did not inflate the actual rates Medway customers paid for cable service. Yet that is exactly what the current Order requires.

In its Response to the Department's Record Requests at the June 24, 2008 Hearing, Comcast committed to voluntarily recalculate its MPR as a means of resolving the current controversy. The Company explained:

Comcast is prepared in the future to lower the local MPR by an amount necessary to offset amounts previously collected for the studio coordinator position.  
(Comcast would consider doing so even though this approach would encompass a

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<sup>2</sup> To be clear, Comcast is *not* objecting to the Department taking advantage of the brief extension the parties mutually agreed to for issuing this year's rate decision. Comcast's objection arises from the Department reopening prior rate periods.

period far predating the current rate review and ordinary refund limitations.)  
[Comcast Response to Record Request 2.]

Although the Order does not address this voluntary offer, Comcast respectfully submits that it provides the ideal means of quickly resolving this matter. A 12 month refund, coupled with Comcast's voluntary rate form true-up for earlier periods, would enable the Department to fulfill its regulatory mission while respecting critical jurisdictional restraints.

For the foregoing reasons, Comcast asks the Department to reconsider the November 17<sup>th</sup> Order and conform the mandated refund period to the one-year limit established by the FCC.

Respectfully submitted,

**Comcast Cable Communications, Inc.**

By: \_\_\_\_\_

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November 25, 2008

**CERTIFICATE OF SERVICE**

I, Nichele Rice, hereby certify that a true and correct copy of the foregoing  
Petition for Partial Reconsideration was sent via U.S. Mail (and e-mail where indicated)  
to the following parties on November 25, 2008. An additional copy was sent via  
Overnight Mail to Catrice C. Williams, Secretary.

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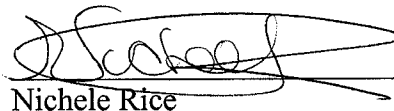
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