

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

)	Docket No. Y-98 INC, Y-98 EQU
)	Date Issued: June 9, 1999
In the Matter of)	
)	Blackstone, CUID MA 0222
Cox Communications, Inc.)	Franklin, CUID MA 0152
)	Millis, CUID MA 0174
For a Determination of)	North Attleborough, CUID MA 0135
Cable Television Rates)	Norton, CUID MA 0170
)	Plainville, CUID MA 0150
)	Somerset, CUID MA 0151
)	Taunton, CUID MA 0144

RATE ORDER

APPEARANCES:

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FOR: COX COMMUNICATIONS, INC.
Petitioner

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Intervenor

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Intervenor

I. INTRODUCTION

On September 21, 1998, Cox Communications, Inc. (“Cox” or “the Company”) filed with the Cable Television Division (“Cable Division”)¹ of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240s² and proposed equipment and installation rates on FCC Form 1205s³ for each of the above-captioned communities.⁴ Pursuant to 47 C.F.R. § 76.933(g), Cox put these proposed programming and equipment rates into effect on November 1, 1998.

The Cable Division held a public hearing on Cox’s pending filings in Somerset on May 4, 1999. The Towns of North Attleborough and Somerset and the City of Taunton intervened in this proceeding. The evidentiary record includes eight Cox exhibits, 10 Cable Division exhibits that include Cox’s responses to our information requests, and two Taunton exhibits. At the public hearing, Intervenor Somerset presented written testimony, which was accepted into the record. No briefs were submitted 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 reflecting inflation, changes in external costs or changes in the number of regulated channels is found in the FCC’s rate regulations. Specifically, the regulations provide that the rate regulator shall ensure that the rates comply with the requirements of the Cable Television Consumer and Competition Act of 1992 as amended (the “Cable Act”), at 47 U.S.C. § 543. 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 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.

¹ 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.

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. Cox filed combined FCC Form 1240s for Franklin and Millis, North Attleborough and Taunton, and Somerset and Swansea (whose rates are not regulated); and individual FCC Form 1240s for Blackstone, Norton and Plainville.

³ 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. Cox filed a combined nationwide company-level FCC Form 1205, which it is permitted to do under the Telecommunications Act of 1996, see 47 U.S.C. § 543(a)(7); 47 C.F.R. § 76.923(c).

⁴ Cox also serves the Town of Swansea, which has not requested cable rate regulation.

In establishing whether proposed rates comply with the federal regulations, the burden of proof is on the cable operator to demonstrate that its initial rates for the basic service tier and accompanying equipment, or proposed increases in these rates, 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). Adjustments on FCC Form 1210 for inflation and changes in external costs must satisfy the requirements of 47 C.F.R. § 76.922(d)(2) and (3). With respect to equipment, subscriber charges shall not exceed charges based on actual costs determined in accordance with the requirements of 47 C.F.R. § 76.924. 47 C.F.R. § 76.923(a)(2). Accordingly, the Cable Division must determine that upon a showing by Cox, 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 Cox's FCC Form 1205 and 1240s comply with the applicable federal regulations. However, several issues with respect to Cox's FCC Form 1240 are addressed herein. Specifically, we address whether Cox's proposed refunds in Somerset must be made to all BST subscribers, or only to those BST subscribers who did not receive the cable programming services tier ("CPST"). The Cable Division also addresses the rate treatment of programming costs for WTBS, and issues concerning converter prices on FCC Form 1205 raised by Intervenors Somerset and Taunton.

A. The FCC Form 1240 Filings

1. The Somerset Filings

On February 16, 1999, Cox filed a corrected FCC Form 1240 for the Town of Somerset (Exh. CATV-1). In its initial Somerset FCC Form 1240, Cox had properly showed two channels as having been moved from the BST to the CPST, but the Company had not transferred between the tiers the costs related to these two channels (Exh. CATV-9). As a result, the maximum permitted rate ("MPR") for the BST was overstated by \$0.92, whereas the MPR for the CPST was understated by \$1.17 (Exh. CATV-8).

Cox requested that it be allowed to keep these BST and CPST rates in effect until the next FCC Form 1240 filing (*id.*). The Company argued that this would prevent it from having to change its rates within the next several months, followed by a further rate increase anticipated in its next FCC Form 1240 (Exh. CATV-9). Cox proposed to make a refund to BST-only subscribers of \$0.92 per subscriber plus interest for the one-year period November 1998 through October 1999 and presented a refund plan (Exh. CATV-8). The Company proposed to limit its refund to BST-only subscribers, rather than to subscribers who receive both BST and CPST service. In doing so, Cox reasoned that "for the majority of subscribers who subscribe to both tiers ... there is no increase (*id.*)."

We conclude that Cox's proposed refund plan is not in compliance with the FCC's Memorandum Opinion and Order in Continental Cablevision of Massachusetts, Inc. d/b/a Continental Cablevision, FCC 98-168 (released July 23, 1998) (the "Natick Order"). In that proceeding, the cable operator had inadvertently listed four channels as part of the BST instead of the CPST, resulting in an overcharge of \$2.00 on the BST, and an undercharge of \$2.00 on the CPST. Natick Order ¶ 2. The Cable Division directed Continental Cablevision to pay "refunds to all subscribers in Natick who were charged more than the maximum permitted rate for the basic service tier." Natick Order ¶ 3, quoting Continental Cablevision of Massachusetts, Inc. d/b/a Continental Cablevision, Letter Ruling, issued August 4, 1994 at 1. The cable operator appealed the letter ruling to the FCC, contending that the Cable Division's decision results "in a rate reduction that is in direct violation of the Commission's benchmark requirement." Natick Order ¶ 6. In upholding the Cable Division's decision, the FCC stated:

[T]he Commission has had occasion to consider, and reject, arguments like those made by Continental regarding the question of offsetting overcharges on one tier with undercharges on another tier. In *Cencom Cable Income Partners II, L.P.* (Cencom) [12 FCC Rcd 7948 (1997), *recon. denied*, 12 FCC Rcd 22295 (1997)], the Commission noted the "dual regulatory structure for cable services, giving local franchising authorities jurisdiction to regulate [basic service tier] and associated equipment rates, and giving the Commission jurisdiction to regulate [cable programming service tier] rates upon filing of a valid complaint." [12 FCC Rcd. at 7958] The Commission further stated that "Section 76.942 of the Commission's Rules and the *Third Order on Reconsideration* direct local franchising authorities to base refunds on the amount by which aggregate actual revenues exceed aggregate permitted revenues for [basic service tier] service and equipment rates under their regulatory jurisdiction." [12 FCC Rcd. at 7959] The authorities cited by Continental do not provide for aggregating revenues for services and equipment costs that are subject to review by different regulatory authorities. Id. ¶ 7.

Accordingly, Cox cannot aggregate its BST overcharges and CPST undercharges under federal law. Thus, the Company must pay its Somerset refund for BST services to all subscribers, regardless of whether they receive only the BST, or whether they receive both BST and CPST services.

2. WTBS Programming Costs

Effective January 1, 1998, WTBS became a cable service for which Cox must pay a programming fee (Exh. CATV-6). Before that date, WTBS had been a superstation, for which Cox had paid a copyright fee (Exh. CATV-4). When Cox prepared its initial FCC Form 1240s, its semi-annual copyright filing for the period January 1, 1998 to June 30, 1998 had not yet been completed. Accordingly, the BST rates included a copyright charge for the entire true-up period of July 1, 1997 through June 30, 1998 (Exh. CATV-6). Removing the copyright costs from the first six months of 1998, and replacing them with programming costs, results in a monthly reduction of \$0.0295 per subscriber (*id.*). Cox has reflected this change on the second revised FCC Form 1240 filed on May 14, 1999 for Somerset (Exh. CATV-9), and on the second revised FCC Form 1240s it filed on May 28, 1999 for all other communities (Exh. CATV-10). This adjustment results in rates that exceed the MPR Cox could have charged had the WTBS copyright fee been removed from its initial FCC Form 1240 filings by approximately \$0.03 per month.

3. Inflation Adjustment

Cox's second revised FCC Form 1240s incorporate a further downward adjustment of between \$0.05 and \$0.09 per month depending on the community, due to the use of the actual quarterly inflation figure of 0.78% for October 1, 1998 to December 31, 1998, rather than the extrapolation for these months of the previous quarter's inflation rate of 1.00%.⁵ This adjustment complies with the Instructions to FCC Form 1240, which require cable operators to "[enter] the quarterly inflation factor most recently released by the Commission." FCC Form 1240, Instructions (January 1996) at 13, Line C3; see also the FCC's Memorandum Opinion and Order, Time Warner Cable, Chatham County, et al., DA 98-967 (released May 26, 1998).

4. Conclusion

As the result of the adjustments for WTBS programming costs and inflation, the Cable Division's approved BST MPRs for all communities except Somerset are between \$0.08 and \$0.12 per month less than Cox's proposed BST rates. In Somerset, these two adjustments together with the BST overcharge result in a Cable Division approved BST MPR that is \$1.00 per month less than Cox's proposed BST rate.

The Cable Division denies Cox's request to delay refunding these overcharges until after its next annual rate adjustment on November 1, 1999. First, the overcharges were the result of errors on the part of Cox in preparing the forms, and not the result of projections which later proved to be incorrect. Further, when aggregated over a number of months, these overcharges are not de minimis. In addition, because of uncertainty surrounding Cox's continued ownership of its Massachusetts franchises, it will be administratively more efficient to review next year's

⁵ For the 0.78% inflation figure, see FCC, Cable Services Bureau Action, Fourth Quarter 1998 Inflation Adjustment Figure For Cable Operators using FCC Form 1240 Now Available, DA 99-640 (April 1, 1999).

forms without any outstanding refund issues. Accordingly, the Cable Division directs Cox to adjust its BST rates and pay the appropriate refund to all BST subscribers on its next available billing cycle, in accordance with a refund plan to be filed with the Cable Division.

B. The FCC Form 1205 Filing

Intervenors Somerset and Taunton questioned what they argued was a discrepancy in Cox's converter prices. Somerset observed that the MPR for addressable converters was set at \$1.18 in the Cable Division's June 23, 1997 Rate Order, (see CoxCom, Inc., Blackstone et al. Y-96 INC, Y-96 EQU (issued June 23, 1997) (the "1997 Order"), but that the current monthly charge for converters is \$2.84 (Somerset Testimony at 2). The Intervenors contend that an increase from \$1.18 to \$2.84 is unreasonable (Somerset Testimony at 2; Taunton Comments at 1).

The equipment rates approved in the 1997 Order were filed by TCI, the owner of the Cox Massachusetts system before January 1, 1997 (1997 Order at 1). Subsequently, Cox filed a nationwide FCC Form 1205 for the first time, as permitted under the Telecommunications Act of 1996. Communications Act of 1934, as amended, § 623(a)(7); 47 U.S.C. § 543(a)(7). The Cable Division approved the nationwide FCC Form 1205 for Cox's Massachusetts communities, establishing Cox's MPR for addressable converters at \$2.60. See Cox Communications, Inc., Blackstone et al., Y-97 INC, Y-97 EQU (issued April 13, 1998); and the Erratum (issued April 15, 1998). The increase in converter prices resulted, in part, from Cox's decision to file a nationwide FCC Form 1205 for all its equipment and installation costs, which used a nationwide average for converter costs, including both old and new converters. Cox, however, chose not to charge its subscribers the approved MPR, but rather charged only \$2.19 for the addressable converters. See Letter from Sally Everett Williamson to Kevin S. Wrege (October 14, 1997) at 2. Thus, in the present proceeding, Cox's proposed increase in its MPR for addressable converters is from \$2.60 to \$2.84, not from \$2.19 to \$2.84.

The Cable Division has reviewed Cox's pending nationwide FCC Form 1205, and concludes that it was completed in compliance with FCC regulations. We find the equipment rates included in the FCC Form 1205 to be reasonable under federal law.

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, Cox's FCC Form 1240s as filed on May 14, 1999 for Somerset and on May 28, 1999 for Blackstone, Franklin, Millis, North Attleborough, Norton, Plainville and Taunton.

Further, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Cox's FCC Form 1205s as filed on September 21, 1998 for Blackstone, Franklin, Millis, North Attleborough, Norton, Plainville, Somerset and Taunton.

The Cable Division directs Cox to file a refund plan in accordance with this Rate Order, incorporating both a revised refund plan for Somerset, and refunds due to WTBS programming costs and inflation, not later than Wednesday, June 23, 1999.

The attached schedule provides the current and 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**

** Formally, the "Division of Community Antenna Television" under G.L. c. 166A, § 2.

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 7 days of the filing of the initial petition for appeal.

Cox Communications, Inc.					
Basic Service Tier Programming Rates and Service Charges					
	A	B	C	D	E
	Previous Rate	Current Rate Effective November 1, 1998	Proposed Maximum Permitted Rate	Division Approved Maximum Permitted Rate	Difference (D-C)
Basic Service Tier					
Blackstone	\$11.75	\$10.37	\$10.37	\$10.25	\$(0.12)
Franklin	\$11.75	\$11.29	\$11.29	\$11.18	\$(0.11)
Millis	\$11.75	\$11.29	\$11.29	\$11.18	\$(0.11)
North Attleborough	\$10.56	\$10.49	\$10.49	\$10.41	\$(0.08)
Norton	\$11.75	\$11.29	\$11.29	\$11.18	\$(0.11)
Plainville	\$11.75	\$11.29	\$11.29	\$11.19	\$(0.10)
Somerset	\$11.75	\$11.29	\$11.28	\$10.28	\$(1.00)
Taunton	\$10.56	\$10.49	\$10.49	\$10.41	\$(0.08)
Equipment and Service Charges					
All Communities					
Remote	\$0.17	\$0.19	\$0.19	\$0.19	\$0.00
Addressable Converter	\$2.19	\$2.84	\$2.84	\$2.84	\$0.00

