



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

RATE ORDER

CTV 03-2

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240 and 1205 filed by Cox Com, Inc., d/b/a Cox Communications New England for the community of Holland, Massachusetts (CUID MA 0321)

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APPEARANCE:

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FOR: COX COM, INC.  
Petitioner

## I. INTRODUCTION

Cox Com, Inc., d/b/a Cox Communications New England (“Cox” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy on May 1, 2003, proposed basic service tier (“BST”) programming, equipment, and installation rates on Federal Communications Commission (“FCC”) Forms 1240 and 1205 for the Town of Holland. The Company later discovered an error on its FCC Form 1205 as originally filed, and on July 26, 2003, the Company, at its own discretion, filed a revised FCC Form 1205. Pursuant to federal regulations, the rates Cox proposed in its FCC Forms 1240 and 1205 filings became effective on August 1, 2003. See 47 C.F.R. § 76.933(g).

The Cable Division held a public and evidentiary hearing on Cox’s pending filings in Holland on December 2, 2003. There were no intervenors in this proceeding. The evidentiary record consists of Cox’s rate forms admitted as Cox Exhibits 1 through 3 and Cox’s responses to record requests issued by the Cable Division.

## 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 to the extent they are reasonably certain and reasonably quantifiable; however, 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 (released May 3, 1993) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

### III. DISCUSSION AND ANALYSIS

#### A. FCC Form 1240 Copyright Fees

The Holland system is in a unique position in that its headend is located outside of the Commonwealth, in Connecticut, and yet its designated market area<sup>1</sup> is Springfield, Massachusetts (RR-CTV-3; RR-CTV-2). Because copyright fees are based, in part, on the carriage of distant signals to the headend, the Cable Division, in reviewing the filing, focused particular attention on the copyright fees paid by Cox (see Exh. Cox-1, at Worksheet 7, Line 703.) Copyright costs are external costs, changes in which may cause an adjustment in the BST. 47 C.F.R. § 76.922(e)(2)(ii). In its channel line-up submitted as part of the

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<sup>1</sup> Designated market area or DMA is a term used by federal regulations to determine, in part, must carry requirements. See 47 C.F.R. § 76.55(e)(2). In lay terms, it defines which local broadcast channels a cable operator carries.

FCC Form 1240, Cox listed broadcast channel WSBK as being removed from the BST and replaced with a non-broadcast Cox-owned channel, Cox Connection (Exh. Cox-1, Channel Line-Ups). The Cable Division noted that unlike a non-broadcast channel, WSBK would potentially be subject to copyright fees depending on how the channel is received and categorized. Therefore, the Cable Division, in reviewing the FCC Form 1240, took care to ensure that the copyright fees as filed took into account the channel removal.

The copyright rules provide a method for determining the appropriate copyright fees based on factors such as the number of distant signal channels. See generally 17 U.S.C. § 111; 37 C.F.R. § 256.2; Federal Copyright Office Form SA3. In the absence of distant signal channels, the rules require that all cable operators pay at least a set minimum fee.<sup>2</sup> Id. These copyright fees are determined at the headend level, which in the case of Holland would be Enfield, Connecticut. Id.; RR-CTV-2.

Cox indicated that the Company had inappropriately included WSBK on the copyright fee section of its filing and that the removal of WSBK from the BST had actually occurred in December of 2001 (RR-CTV-1). However, Cox further stated that in any event the inclusion of WSBK on its filing had no impact on the copyright fees since WSBK is not classified as a distant signal channel (id.). Cox stated that there are no distant signal channels related to its Enfield, Connecticut, headend and hence, the Company pays only the minimum fee provided under the copyright rules (RR-CTV-3). Therefore, the removal of WSBK from the BST

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<sup>2</sup> The minimum fee is currently .956 of one percent of the cable system's gross receipts for the accounting period. Federal Copyright Office Form SA3, at L, Block 1.

line-up had no impact on the FCC Form 1240 copyright fees. In reviewing the copyright fees included on the FCC Form 1240, the Cable Division finds that Cox correctly calculated the copyright fees and that the erroneous inclusion of WSBK in the channel line-up had no impact on the BST rate calculation.

B. FCC Form 1205 Hourly Service Charge

As noted earlier, Cox filed a revised FCC Form 1205 with the Cable Division on July 26, 2003, in order to justify its equipment and installation rates in Holland (Exh. Cox-3). 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). Holland is the only Massachusetts community that Cox serves; however, the Company has chosen to aggregate its equipment and installation costs at the company level as allowed under federal law and regulations (see Exh. Cox-3).

In the previous rate proceeding, the Cable Division noted that Cox's reported hourly service charge appeared to be significantly higher than that of other cable operators serving Massachusetts subscribers. See Cox Com, Inc., CTV 02-4 (2003). In light of this concern, the Cable Division reviewed the current filing with particular attention to the costs from which the hourly service charge is derived. While certain capital costs and operating expenses increased, the hourly service charge decreased by almost six percent (Exh. Cox-3; CTV 02-4, FCC Form 1205). The information and rationale provided by the Company is consistent with last year's filing. Therefore, while the Cable Division will continue to monitor the Company's

hourly service charge, we will approve Cox's stated hourly service charge on its current FCC Form 1205 filing.

C. FCC Form 1205 High Definition Converters

Cox's filing included for the first time a proposed maximum permitted rate for high definition television ("HDTV") converters (Exh. Cox-3). Under federal law and regulations, to the extent that HDTV converters are used to receive the BST, such converters are subject to rate regulation. 47 U.S.C. § 543(b)(3); 47 C.F.R. § 76.923(a)(1). However, a cable operator may choose to establish a separate monthly lease rate for each type of equipment within a category. Id.; 47 C.F.R. §§ 76.923(c)(1); 76.923(g). In this proceeding, Cox chose to separate HDTV converters from all other converters (Exh. Cox-3). In reviewing the HDTV converter section of the FCC Form 1205, we find that the costs as calculated on the FCC Form 1205 are reasonable and in compliance with applicable statutes and regulations.

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 1240 as filed on May 1, 2003, for the Town of Holland.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Cox's revised FCC Form 1205 as filed on July 25, 2003, for the Town of Holland.

The attached Rate Schedule provides Cox'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: January 9, 2004



### **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.