

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION

In the Matter of) Docket No. Y-99 INC, Y-99 EQU
Cox Communications, Inc.) Date Issued: May 10, 2000
)
For a Determination of)
Cable Television Rates) Holland, CUID MA 0321

RATE ORDER

APPEARANCES: Sally P. Everett, Esq.
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- and -

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FOR: COX COMMUNICATIONS, INC.
Petitioner

I. INTRODUCTION

This proceeding before the Cable Television Division (“Cable Division”)¹ of the Department of Telecommunications and Energy concerns proposed basic service tier (“BST”) cable television programming and equipment rates for the Town of Holland. The franchise for Holland was transferred on September 1, 1999 from MediaOne of Western Massachusetts, Inc. (“MediaOne”), to Cox Communications, Inc. (“Cox” or “the Company”). Accordingly, this proceeding considers Federal Communications Commission (“FCC”) rate forms filed by both Cox and MediaOne. Following its acquisition of the Holland franchise, Cox assumed the responsibility for defending all pending MediaOne rate filings affecting Holland before the Cable Division.

On November 27, 1998, MediaOne filed with the Cable Division its proposed programming BST maximum permitted rate (“MPR”) of \$10.37 for Holland on FCC Form 1210. As allowed by the FCC’s rate regulations, MediaOne put this rate into effect on January 1, 1999. 47 C.F.R. § 76.933(a). On October 18, 1999, Cox filed with the Cable Division an FCC Form 1240 for Holland that proposed a programming BST MPR rate of \$10.82. Cox has not put this proposed rate into effect, and has continued to charge the BST rate proposed by the MediaOne FCC Form 1210.

In addition, on October 18, 1999, Cox filed with the Cable Division its FCC Form 1205 for the fiscal year ending June 30, 1999, establishing MPRs for equipment and installations. Nonetheless, Cox has continued to charge the equipment and installation rates that MediaOne was charging on the date the Holland franchise was acquired by Cox.

The Cable Division held a public hearing on Cox’s pending filings in Boston on February 15, 2000. The evidentiary record includes one Cox exhibit and Cox’s responses to three record requests posed by the Cable Division. There were no other parties to the proceeding.

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.

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 are reasonable and comply with 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) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. Local rate regulators, such as the Cable Division, are required to review the Company's FCC rate form filings to determine whether the rates are reasonable and in compliance with the Cable Act. 47 C.F.R. §§ 76.922, 76.923, 76.930.

The FCC Form 1205 is prepared on an annual basis using information from the cable operator's previous fiscal year. FCC Form 1205 Instructions at 2. Subscriber charges established by FCC Form 1205 shall not exceed charges based on actual costs as determined in accordance with regulatory requirements. 47 C.F.R. § 76.923(a)(2).

The FCC Form 1210 allows a cable operator to update its basic service tier programming rates on a quarterly basis to account for inflation, changes in external costs, and changes in the number of regulated channels. 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).

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. 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 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).

III. DISCUSSION AND ANALYSIS

The Cable Division finds that the Holland FCC Form 1210 and FCC Form 1240 under review comply with the applicable federal regulations. However, a question has arisen about which FCC Form 1205, if any, is applicable to this proceeding.

To justify its equipment and installation rates in Holland, Cox submitted its nationwide FCC Form 1205 for the fiscal year ending June 30, 1999.² This filing does not include information concerning Holland because, until September 1, 1999, the Holland franchise was held by MediaOne. MediaOne prepared an FCC Form 1205 for the calendar year ending December 31, 1998 that includes Holland data.³ However, this form is reviewed by the FCC rather than the Cable Division, because the Social Contract between MediaOne and the FCC gives sole authority to review MediaOne's FCC Form 1205 to the FCC.⁴ Social Contract for Continental Cablevision, Inc., FCC 95-355 (1995) at 15-16. The FCC has not yet reviewed

² At the cable operator's discretion, FCC Form 1205 may be prepared "on a franchise, system, regional or company level." 47 C.F.R. § 76.923(c)(1). Cox has elected to file one FCC Form 1205 on a company or national basis (RR-CATV-3).

³ MediaOne has elected to file its FCC Form 1205s on a regional basis; the "New England Region" FCC Form 1205 prepared for the calendar year ending December 31, 1998 included all of MediaOne's New England and New York systems, including Holland (Exh. Cox-1, FCC Form 1205 (MediaOne)).

⁴ The Social Contract between Continental Cablevision, Inc. ("Continental"), now MediaOne, and the FCC, resolved numerous rate complaints against Continental, directed the payment of refunds, and also required Continental to spend \$1.35 billion to upgrade its domestic cable systems between 1995 and 2000. Social Contract for Continental Cablevision, Inc., FCC 95-355 (effective date August 1, 1995) at 2-3.

this FCC Form 1205.

In its response to Record Request 3, Cox addressed the Cable Division's concern that the actual data regarding equipment for Holland had not been included in the Cox nationwide FCC Form 1205 (RR-CATV-3). Cox proposed that the equipment and installation rates MediaOne established on its New England Region FCC Form 1205 should stay in place as maximum permitted rates (*id.*). Cox also proposed at the public hearing that if the FCC were to reject MediaOne's equipment rates and establish rates below those currently in effect in Holland, Cox would be responsible to refund any overcharges. Cox agrees not to change its equipment rates in Holland until the Company's equipment rates are changed based on its national FCC Form 1205 for the fiscal year ending June 30, 2000, which will incorporate data from Holland (*id.*). Cox will request that the Cable Division approve its national FCC Form 1205 rates for Holland as part of its next rate filing (*id.*).

The Cable Division has reviewed Cox's proposal. Approval of the proposal would result in the continuation of MediaOne's current monthly converter rate of \$2.65 until Cox's FCC Form 1205 for the fiscal year ending June 30, 2000 goes into effect on November 1, 2000. This current rate is below both MediaOne's proposed regional MPR of \$2.74 and Cox's proposed national MPR of \$3.53 (Exh. Cox-1, FCC Form 1205 (MediaOne) at 7, Line 3; FCC Form 1205 (Cox) at 7, Line 3). Although the current remote control rate of \$0.35 is higher than Cox's proposed rate of \$0.19 (FCC Form 1205 (Cox) at 7, Line 2), the \$0.16 differential between these rates is substantially less than the \$0.88 by which Cox's proposed converter rate exceeds the actual converter rate in Holland. Furthermore, the current primary installation unwired rate of \$36.03 is less than Cox's proposed primary installation unwired rate of \$46.82 (Exh. Cox-1, FCC Form 1205 (Cox) at 7, Line i.b.1).

The Cable Division finds that Cox's proposal is fair to Holland's subscribers and accepts Cox's proposed resolution of this matter. We will allow Cox to continue to charge equipment and installation rates established by MediaOne's New England Region FCC Form 1205, subject to refund as a result of any FCC order on this matter.

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 1210 as filed on November 27, 1998 for Holland.

Further, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Cox's FCC Form 1240 as filed on October 18, 1999 for Holland.

Further, the Cable Division accepts as reasonable Cox's proposal to continue MediaOne's rates pending FCC review, if any, and directs Cox to make refunds, if any, based on the FCC's findings.

The attached schedule provides the current and maximum permitted basic service tier programming and equipment rates for the Town of Holland.

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