



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

RATE ORDER

CTV 04-2

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.

APPEARANCE:

Alan D. Mandl, Esq.
Mandl & Mandl LLP
10 Post Office Square, Suite 630
Boston, MA 02109
FOR: COX COM, INC.
Petitioner

I. INTRODUCTION

On May 3, 2004, 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 proposed basic service tier (“BST”) programming rates on a Federal Communications Commission (“FCC”) Form 1240 for the Town of Holland, Massachusetts. This filing was accompanied by Cox’s nationwide FCC Form 1205 with proposed equipment and installation rates. Cox later discovered an error in an inflation factor used in its FCC Form 1240, and on May 28, 2004, Cox filed a revised FCC Form 1240. Cox then discovered a computational error on its FCC Form 1205, and on July 28, 2004, Cox filed a revised nationwide FCC Form 1205. Pursuant to 47 C.F.R. § 76.933(g), Cox implemented the resulting rate changes on August 1, 2004.

The Cable Division held a public and evidentiary hearing on Cox’s pending filings in Boston on September 21, 2004. There were no intervenors in this proceeding. The evidentiary record includes seven Cox exhibits, nine Cable Division exhibits, and the Company’s responses to record requests.

II. DISCUSSION AND ANALYSIS

A. FCC Form 1240

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.

Instructions to FCC Form 1240, at 1-2; 47 C.F.R. § 76.922(e)(1). To adjust rates 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).

The standard under which the Cable Division must review rate adjustments is found in the FCC's rate regulations. Specifically, 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; see also 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 Charge" as determined by federal regulations.

See 47 C.F.R. § 76.922(c). 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); see also 47 C.F.R. § 76.942. The burden of proof is on the cable operator to demonstrate that its proposed rates for BST programming comply with federal law 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, at 5716, ¶ 128 (1993) ("Rate Order"); see also 47 C.F.R. § 76.937(a).

On its revised FCC Form 1240, Cox proposed a reduction in the BST maximum permitted rate ("MPR") from \$10.90 to \$10.27 (Exh. Cox-2, at 2, 4). Cox also proposed an operator selected rate of \$10.27 (Exh. Cox-2, at 4). On August 1, 2004, Cox reduced

its actual BST rate in Holland to \$10.27 from the previous rate of \$10.75 (Tr. at 7). This reduction resulted from a lesser amount of true-up on the current form, compared with the previous year's form (Exh. Cox-2, at 4, Line I8; see Cox Com, Inc., CTV 03-2 (2004)). Based on our review of Cox's revised FCC Form 1240, as well as the Company's responses to inquiries, we conclude that the BST MPR established by the revised FCC Form 1240 is just and reasonable and in compliance with applicable law.

B. FCC Form 1205

1. Introduction

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 for equipment shall not exceed charges based on actual costs as determined in accordance with FCC regulations. 47 C.F.R. § 76.923(a)(2).

The standard under which the Cable Division must review rate adjustments is found in the FCC's rate regulations. Specifically, 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; see also 47 C.F.R. §§ 76.922, 76.923, and 76.930. The burden of proof is on the cable operator to demonstrate that its proposed rates for regulated equipment and installations comply with federal law and implementing regulations. 47 U.S.C. § 543; Rate Order at 5716, ¶ 128 (1993); see also 47 C.F.R. § 76.937(a).

2. Installation Rates

Cox proposed to change only one installation rate (Exh. Cox-6). On the revised FCC Form 1205, the Company calculated an MPR for the “Installation of Additional Connections at Time of Initial Installation” of \$21.23 (Exh. Cox-4, at 7, Line 1.b.3). The Company previously charged \$28.99 for this type of installation service (Exh. Cox-6). The reduction in the rate is a result of a decrease in Cox’s estimate of the average time required for this installation activity (Exh. Cox-4, at 3, Schedule D, Line C; see Cox Com. Inc., CTV 03-2 (2004)). Because the MPR for this activity is calculated by multiplying the average time with the Company’s hourly service charge (“HSC”), where there is no significant increase in the HSC over the previous year,¹ a decrease in the time required for this activity results in a lower MPR (Exh. Cox-4, at 4, Step B, Line 9.c). The remainder of Cox’s MPRs for installations increased only slightly because of the higher proposed HSC, but in every case, Cox is charging a lower rate than the MPRs established by the revised FCC Form 1205 (Exh. Cox-4, at 7; Exh. Cox-6). Based on our review of Cox’s revised FCC Form 1205, as well as the Company’s responses to inquiries, we conclude that Cox’s installation rates established by the revised FCC Form 1205 are just and reasonable and in compliance with applicable law.

¹ Cox’s HSC increased from \$50.40 on the previous filing to \$51.46 proposed by the present filing (Cox Com. Inc., CTV 03-2, at Rate Schedule (2004); Exh. Cox-4, at 4, Step A, Line 7).

3. Equipment Rates

Cox proposed to increase its MPR for addressable/digital converters from \$4.32 to \$6.98, and its MPR for remote controls from \$0.27 to \$0.34 (Exh. Cox-4, at 7; Cox Com. Inc., CTV 03-2, at Rate Schedule (2004)). The Company did not propose to increase its actual monthly lease rates for addressable/digital converters and remote controls, which would continue to be \$4.20 and at \$0.20, respectively (Exh. Cox-6).

To determine the reasons for the increase in the MPRs for this equipment, the Cable Division compared Cox's revised FCC Form 1205 filing with the previous year's filing, and found that the total number of the Company's converters and remote controls had declined from about 5,998,000 units on December 31, 2002, to about 4,489,000 units on December 31, 2003 (Exh. CTV-3; Exh. Cox-4, at 3).² During the same period, the current provision for depreciation applicable to addressable/digital converters increased from \$183 million to \$261 million (Exh. CTV-6). For remote controls, the current provision for depreciation remained unchanged (Exh. CTV-5).

Cox explained that the decline in equipment units reported on the form occurred because of two developments during 2003 (Exh. CTV-4). First, the Company removed from its books a large number of converters and remote controls that were no longer in service or in inventory, but were still reported on the Company's fixed asset records

² Cox's current form reports equal numbers of converters and remote controls (Exh. Cox-3, at 3). The Company explained that it does not track remote controls separately, and estimates the number of remote controls in service based on the number of converters in service (Exh. CTV-2). Accordingly, any decline in the number of converters will also result in a decline in the number of remote controls.

(Exh. CTV-3; Tr. at 14). Second, the Company's deployment of addressable analog converters decreased as subscribers purchased cable-ready television sets and returned their converters to the Company (Tr. at 14-18).

Cox also explained that it reduced its depreciable life for converters and remote controls from five years to three years (Tr. at 18). The Company made this change because the advance of technology is accelerating the obsolescence of its equipment, which means that the units will be useful to the Company and its subscribers for a shorter period of time (id.). This reduction affects both new units and units already in service (Tr. at 19).³ This change increased the Company's current depreciation expense.

The FCC Form 1205 calculates the monthly lease rate for a category of equipment by dividing the total cost for all units of equipment by the total number of units reported on the form (Exh. Cox-4, at 5). If the costs increase, or the number of units reported on the form decreases, or both, the per unit lease rate for the equipment will increase. In this case, the Company increased its equipment cost for addressable/digital converters by decreasing their depreciable life, and also removed large numbers of converters that were reported on the previous form.⁴ These changes necessarily increase the Company's MPR for addressable/digital converters because the equipment's increased total costs are divided

³ Because of this change, on its next filing Cox expects to fully depreciate an additional 146,260 non-addressable analog converters, and an additional 1,370,440 addressable analog and digital converters (RR-CTV-1).

⁴ Cox stated that the inclusion on the previous form of the units it later removed produced MPRs that were lower than they would have been had these units been excluded, since their inclusion resulted in lower average costs per unit (Exh. CTV-3).

among a smaller number of total units. For remote controls, although the depreciation expense did not increase, the MPR increased because of the removal of many remote controls that were reported on the previous form. Furthermore, the subtraction of the costs associated with the converters and remote controls removed from the books did not offset the increases to the MPR calculations, because these units were either entirely depreciated, or they were older, less expensive units, as in the case of the addressable analog converters returned by subscribers. We conclude that Cox has adequately explained the reasons for the increase in its MPRs for addressable/digital converters and remote controls.

The Cable Division would have expected Cox to report a larger current provision for depreciation for remote controls, since the depreciable life for these units was adjusted from five to three years and new, more expensive units were introduced (Exh. CTV-5). However, the current provision for remote control depreciation on both the original and revised FCC Forms 1205 was the same amount that had been reported on the previous year's form (id.; Exh. Cox-3, at 3; Exh. Cox-4, at 3). The Company acknowledged that it had failed to update the current provision for depreciation from the previous form, and provided the Cable Division with the correct amount (Exh. CTV-5). Cox did not update its rate form to correct the understated depreciation expense. However, the Cable Division will not require Cox to make an amended filing, since such a filing would be for informational purposes only. Cox has chosen to charge less than its MPR of \$0.34 for remote controls. Since Cox has elected to file rate adjustments under the FCC annual ratemaking process, a change to the MPR at this time would be of no consequence to the Company. See 47

C.F.R. § 76.922(e)(1). Moreover, because there is no true-up process associated with the FCC Form 1205, subscribers will not be responsible for any overcharges associated with the rate for remote controls.

On its FCC Form 1205, Cox also included special monthly lease rates for HDTV converters, DVR converters, and combined HD/DVR converters.⁵ The Company's proposed MPRs for these units are \$11.12, \$14.27 and \$15.47, but the Company's proposed monthly lease rate for these units is only \$9.99, unchanged from the previous year (Exh. Cox-4, at 7; Exh. Cox-6).⁶ Based on our review of Cox's revised FCC Form 1205, as well as the Company's responses to inquiries, we conclude that the MPRs for equipment established by the revised FCC Form 1205 are just and reasonable and in compliance with applicable law.

4. Equipment Pick Up and Quick Connect Charges

On September 16, 2004, Cox notified the Cable Division that it was introducing two new charges, which would take effect on November 15, 2004 (Exh. CTV-9). First, if subscribers wished to disconnect or downgrade their service and request that a Company

⁵ Cox did not include a proposed MPR for CableCARDS on its FCC Form 1205. The Cable Division has concluded that CableCARDS are subject to regulation, because the basic service tier's signals pass through the card. Charter Communications Entertainment I, L.L.C., CTV 04-1 (2004). Because we do not expect that there will be a substantial deployment of CableCARDS, we will not require Cox to make a specific filing at this time under 47 C.F.R. § 76.923(o) to support its CableCARD charge. Instead, we direct Cox to include its CableCARD charge on its next annual FCC Form 1205 filing.

⁶ There are no special charges for the remote controls associated with these converters, as Cox has aggregated all of its remote controls in one category, including those for HDTV, DVR and HD/DVR converters (Exh. CTV-5).

technician pick up equipment at their home, a \$17.00 charge would be added to their bills (id.). Second, Cox inaugurated a “quick connect” service, which would allow analog or digital subscribers to perform their own installations of either of these products (id.). Again, the charge for this option would be \$17.00 (id.). Neither of these rates was included on Cox’s FCC Form 1205.

Cox explained that these services’ costs and labor hours were included in the development of the FCC Form 1205’s HSC; however, they are regarded as custom services and not listed separately on the form (RR-CTV-7). The \$17.00 charge was computed by multiplying the Company’s HSC by the 20 minutes the Company estimated that each activity would take (RR-CTV-6).⁷ Cox has revised its rate card for the Town of Holland, to include the equipment pick up, the quick connect installation, and a \$25.00 “quick connect tech assist install charge,” which applies when a Cox technician delivers to the subscriber’s home a converter to be used in a quick connect (RR-CTV-8; RR-CTV-10). The Cable Division finds that Cox’s charges for the equipment pick up, the quick connect installation, and the “quick connect tech assist install” are just and reasonable and in compliance with applicable law.

⁷ While it was self-evident to the Cable Division that the equipment pickup service requires a technician to visit the subscriber’s home, it was not certain that the quick connect service required a visit. Cox explained that for a quick connect, the technician drives to the subscriber’s home, removes the channel filter and tests the drop (RR-CTV-6).

III. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby accepts Cox's FCC Form 1240, as filed on May 28, 2004, for the Town of Holland.

Further, upon due notice, hearing, and consideration, the Cable Division hereby accepts Cox's FCC Form 1205, as filed on July 28, 2004, 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**

Issued: October 28, 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. 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.