



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 09-6

October 29, 2010

Petition of Comcast Cable Communications, Inc. to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Comcast Cable Communications, Inc. that are currently subject to rate regulation.

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RATE ORDER

APPEARANCES:

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FOR: Comcast Cable Communications, Inc.  
Petitioner

## I. INTRODUCTION & PROCEDURAL HISTORY

On October 30, 2009, Comcast Cable Communications, Inc. (“Comcast”) filed Federal Communications Commission (“FCC”) Forms 1240 with the Department of Telecommunications and Cable (“Department”) that proposed basic service tier (“BST”) maximum permitted rates (“MPR”) for its 129 regulated Massachusetts communities.<sup>1</sup> A list of the regulated Massachusetts communities served by Comcast can be found in the Rate Schedule attached hereto as Attachment 1. On December 30, 2009, the Department received amended FCC Forms 1240 for eight municipalities.<sup>2</sup> The amended FCC Forms 1240 reflected changes in franchise related costs (“FRCs”) pertaining to certain interconnection agreements or license renewals executed after Comcast submitted its initial filings. *See* Exs. Comcast-1A, -13A, -41A, -43A, -45A, -4995A, -88A, and -120A.<sup>3</sup> In conjunction with its FCC Form 1240 filings, Comcast also filed a nationwide FCC Form 1205 that proposed equipment and installation rates. Comcast submitted a revised Form 1205 which contained adjustments specific to its Massachusetts communities on July 26, 2010. Pursuant to FCC regulations, Comcast’s proposed

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<sup>1</sup> Comcast originally filed FCC Forms for 144 municipalities on November 1, 2009. The FCC, however, exempted 15 Massachusetts municipalities subsequent to the commencement of this proceeding by determining that Comcast is subject to effective competition in the municipalities of Bedford, Braintree, Canton, Lawrence, Lynnfield, Marion, Mattapoisett, Medfield, Melrose, Methuen, Middleborough, Norwood, Rochester, Tyngsboro, and Wilmington. *In re Comcast Cable Commc’ns, LLC*, DA 10-848, Fed. Commc’n Comm’n, Memo & Order at Attachment A (rel. May, 2010) and *In re Comcast Cable Commc’ns, LLC*, DA 10-847, Fed. Commc’n Comm’n, Memo & Order at Attachment A (rel. May, 2010). Accordingly, the noted communities are not part of this proceeding. In addition, Comcast recently filed a FCC Form 1240 for the Town of Falmouth (“Falmouth”), for which the FCC had previously determined Comcast to be subject to effective competition. The status of the FCC Form 1240 for Falmouth is discussed *infra*.

<sup>2</sup> Comcast filed amended FCC Forms 1240 for the municipalities of Acushnet, Billerica, Fall River, Foxborough, Gardner, Groveland, New Bedford, and Stoughton.

<sup>3</sup> Citations to Comcast’s FCC Forms 1240 and 1205, and amendments thereto, are to “Ex. Comcast-1,” *et seq.* Citations to the Department’s First Set of Information Requests and Comcast’s responses thereto are to “Ex. DTC-Comcast-1,” *et seq.* Citations to the evidentiary hearing transcript are to Tr. at [page number]. Citations to Comcast’s responses to record requests issued at the evidentiary hearing are to “RR-1,” *et seq.*

BST and equipment and installation rates became effective on February 1, 2009. *See* 47 C.F.R. § 76.933(g). *See, e.g.*, Exs. Comcast-1-145.

The Department issued its Notice of Public Hearing on Cable Television Rates on May 11, 2010. *Petition of Comcast Cable Commc'ns, Inc. to establish & adjust the basic service tier programming, equip., & installation rates for the cmtys. served by Comcast that are currently subject to rate regulation*, DTC 09-6 (“Docket”) at 1. The Department issued 22 information requests (“Information Requests”) to Comcast on June 18, 2010. On July 10, 2010, Comcast filed responses to the Department’s 22 Information Requests. *Id.* Comcast filed its Proof of Notice of the Hearing on July 13, 2010. *Id.*

The Department held a public and evidentiary hearing on July 13, 2010. During the evidentiary hearing, the Department issued seven record requests to Comcast, and the Town of Somerset, an intervenor, issued two record requests to Comcast (the Department’s and Town of Somerset’s record requests are, collectively, the “Record Requests”). *Id.* Comcast filed its responses to the Record Requests on July 26, 2010. *Id.*

On September 28, 2010, the Department issued two additional Information Requests. Docket at 1. Comcast filed its responses on October 6, 2010. *Id.*

The evidentiary record consists of 145 Comcast exhibits; 20 Department exhibits; nine responses to Record Requests; and Comcast’s responses to the Department’s Information Requests. After review and consideration, the Department approves Comcast’s FCC Forms 1240, except those for six municipalities as discussed *infra*. Comcast’s amended FCC Form 1205, as filed on July 26, 2010, is not approved and must be re-filed with the Department as directed below.

## II. ANALYSIS AND FINDINGS

### A. Review of the FCC Form 1240

On November 1, 2009, Comcast submitted FCC Forms 1240 for each of its 129 regulated municipalities in Massachusetts proposing its annual adjustment to its BST MPRs. In reviewing Comcast's FCC Forms 1240, four issues require further elaboration: (i) over-collection of FRCs in the Town of Hatfield; (ii) the regulatory status of Falmouth; (iii) the calculation of retransmission consent fees; and (iv) the calculation of the inflation factor used by Comcast for all its Massachusetts municipalities. These issues are discussed below.

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which a cable operator must calculate its rates. *See* 47 C.F.R. §§ 76.922, 76.930. The FCC Form 1240 allows a cable operator to annually update its BST programming rates to account for inflation; changes in the number of regulated channels; and changes in external costs, including programming costs, copyright costs, and FRCs. *See* 47 C.F.R. § 76.922(e). 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. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fees, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRCs to the extent they are reasonably certain and reasonably quantifiable. *Id.* Such projections, however, are not presumed to be reasonably certain and reasonably quantifiable. *See id.* Accordingly, the operator must demonstrate that FRC projections are reasonably certain and reasonably quantifiable.

The standard under which the Department must review rate adjustments on the FCC Form 1240 is found in the FCC's rate regulations. *See* 47 C.F.R. § 76.922(a). Specifically, the FCC directed local rate regulators, including the Department, to ensure that the approved rates are in compliance with the Communications Act of 1934, 47 U.S.C. § 543, as amended (the "Communications Act") and regulations promulgated thereunder, and do not exceed the maximum permitted charges calculated by the FCC's rate forms. *See* 47 C.F.R. § 76.922(a). The Department may accept, in compliance with the statute, BST rates that do not exceed the approved maximum permitted charge as determined by federal regulations. *See* 47 C.F.R. §§ 76.922(a), 76.922(c). In addition, the Department shall only approve rates it deems reasonable. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15. As noted above, the burden of proof is on the cable operator to demonstrate that its proposed rates for BST programming comply with Section 623 of the Communications Act. 47 U.S.C. § 543; *FCC Rate Order* at 5716, ¶ 128. *See also* 47 C.F.R. § 76.937(a). The Department determines that all of Comcast's FCC Forms 1240, except for those in six municipalities as discussed *infra*, have been prepared in compliance with federal laws and regulations.

(i) Over-collection of FRC Charges in the Town of Hatfield

The Town of Hatfield ("Hatfield") has requested the Department to review two specific line items that are included on the FCC Form 1240 rate filing sheets submitted by Comcast. *See* Hatfield Letter dated Sept. 7, 2010, In re D.T.C. 09-6, referencing Ex. Comcast-53. Specifically, Hatfield requested the Department to review the appropriateness of charges, totaling \$0.42 per subscriber, that Comcast has been collecting since 2002, when its current Hatfield license went into effect. *See* Ex. DTC-Comcast-2, IR2. Upon review, the Department finds that two issues

warrant further attention: (1) the presentation of certain capital obligations on the FRC worksheet; and (2) the over-collection of certain capital obligations.

a. Presentation of Capital Obligations on FRC Worksheets

Comcast's prior Hatfield license ("prior license"), which was executed in 1997 and ran for a five-year term, expired in 2002. Its current license ("renewal license") went into effect in June 2002, for a ten-year term. In the prior license, there had been a \$31,436, or \$0.41 per subscriber per month, obligation for operating expenses related to a public access studio located in Northampton ("Northampton Studio"). When Comcast calculated all FRCs for the renewal license, they totaled \$0.99 per subscriber per month, \$0.58 of which, because it was not already embedded in the basic rate, was itemized as FRCs on subscriber bills. The remaining \$0.41 per subscriber per month remained embedded in the BST rate and was not separately itemized on subscriber bills.<sup>4</sup> Comcast erroneously presented this \$0.41 as referable to recovery of operating expenses of the Northampton Studio, when in actuality it represented recovery of capital-related FRCs solely attributable to a new studio in Hatfield under the renewal license. Ex. Comcast-53.

Despite the fact that Hatfield has not used the Northampton Studio since 2002, the \$0.41 of "previously embedded operating costs" was referred to as related to Hatfield's portion of the Northampton Studio. Those revenues, however, were properly used to pay for FRCs for the new studio in Hatfield under the renewal license and should have been so identified. See Ex. DTC-Comcast-2 IR2. The Department finds that the reference to the Northampton Studio was merely a "mislabeling," and should have referred to the new studio in Hatfield. Moreover, the

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<sup>4</sup> Prior to 2005, FRCs were included in, or embedded, in the BST rate, rather than being separately itemized. In 2005, the Department approved a Comcast proposal to remove FRCs from the BST rate and to itemize FRCs separately on the Form 1240 Worksheet and on customer bills. See *Petition of Comcast Cable Communications, Inc. to establish and adjust the basic service tier programming and equipment rates for the communities currently served by Comcast that are subject to rate regulation*, CTV 04-3/04-4, Rate Order (2005) at 7-19. In order to illustrate that all existing *embedded* FRCs had been removed from the BST rate, Comcast labeled those costs as "previously embedded operating costs." Ex. Comcast-53.

Department finds that the “mislabeling” has no impact on subscribers because the FRCs for the new Hatfield studio are properly collected from Hatfield subscribers under the renewal license.<sup>5</sup>

b. Over-Collection of Charges

In the prior Hatfield license, the operating expenses associated with the Northampton Studio were \$31,436 (or \$6,287 per year) over the five-year term of that license (1997-2002). When that license was renewed in 2002, Comcast determined that there was \$0.99 per subscriber per month of FRCs associated with the renewal license. *See* Ex. DTC-Comcast-2 IR2.

In calculating the embedded FRCs in 2002, Comcast incorrectly calculated the recovery period for the \$31,436 to be five years rather than the 10-year term of the renewal license. Consequently, Comcast had fully recovered the \$31,436 by May 2007, the mid-point of the current license. Notwithstanding that full recovery was completed by May 2007, Comcast continued to collect these costs for the next 41 months through October 2010, resulting in an over-collection from subscribers totaling \$21,481. The Department finds that due to this error, Comcast must return the over-collected charges, with interest, to Hatfield subscribers.<sup>6</sup> *See, e.g., Petition of Comcast Cable Communications, Inc. to establish and adjust the basic service tier programming and equipment rates for the communities served by Comcast that are currently subject to rate regulation*, Rate Order, DTC 07-6 at 7 (2008) (ordering refund with interest of improperly collected FRCs); 47 C.F.R. § 76.942(e) (stating “[rate] [r]efunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments”). Comcast is hereby ordered to file a refund plan showing the total

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<sup>5</sup> While the \$0.41 in FRCs for the new studio are properly collected from Hatfield subscribers, Comcast nonetheless must refund FRC over-collections resulting from use of an incorrect amortization period. *See infra*, section II.b.

<sup>6</sup> Hatfield’s letter requests the Department to review the appropriateness for charges totaling \$0.42 per subscriber per month. *See* Hatfield Letter dated Sept. 7, 2010, In re D.T.C. 09-6, referencing Ex. Comcast-53. As noted above, Comcast calculated the recovery of prior capital costs over a 10-year period with the commencement of the renewal license, and \$0.01 of those costs is appropriately reflected in the current FRC rates.

amount due to subscribers, including principal and interest, together with a timeline for returning the over-collected amount to Hatfield subscribers.

(ii) Regulatory Status of the Town of Falmouth

The FCC has previously determined that Comcast was subject to effective competition in Falmouth. *See In the Matter of Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates Petition for Determination of Effective Competition in 18 Massachusetts Communities*, CSR 7852-E, FCC DA 08-1594, July 3, 2008. Comcast and Falmouth have filed a joint petition requesting FCC reconsideration of that determination. *See Petition of Comcast Cable Communications, Inc. to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Comcast Cable Communications, Inc. that are currently subject to rate regulation*, DTC 08-6 (2009) at 5.

Notwithstanding Comcast having treated Falmouth as a regulated community, and having submitted a FCC Form 1240 to support the BST rate in Falmouth (*see* Ex. Comcast 42), the Department will not review the Falmouth FCC Form 1240 until Falmouth's regulatory status is resolved by the FCC.

(iii) The Retransmission Consent Fees Calculation

FCC Form 1240 provides for recovery of retransmission consent fees for those channels assigned to the BST. *See* FCC Form 1240 Instructions at 39. Comcast has included retransmission consent fees in the Forms 1240 for all of its Massachusetts franchises. *See* Ex. Comcast-1 through Comcast-144.

In response to a Department information request, Comcast provided two schedules to support its retransmission consent charges: one schedule provides the total retransmission expenses incurred for each broadcaster, and the average number of subscribers within the

broadcaster's territory (in order to calculate the monthly retransmission cost per subscriber for each broadcaster); and the other schedule provides the per subscriber fee for each applicable broadcaster for each community. *See* Ex. DTC-Comcast IR-3. In its response to a Department information request, Comcast admitted that the FCC Forms 1240 for the municipalities of Danvers, Marblehead, Revere, Saugus, and Warren contained incorrectly calculated retransmission consent fees. *See* Ex. DTC-Comcast IR-3. Comcast has indicated that it would file revised FCC Forms 1240 for these municipalities. Comcast, however, has not yet done so. In addition, the Department's comparison of the two schedules submitted by Comcast revealed that the retransmission consent fees for an additional 18 municipalities were also calculated incorrectly. Comcast acknowledged these calculation errors at the evidentiary hearing and Comcast has since revised the retransmission consent cost calculation for these 18 municipalities.<sup>7</sup> *See* Ex. DTC-Comcast RR-5.

The Department has reviewed the revised calculations for the 18 communities and approves the adjustments made to the retransmission consent fees. Regarding Danvers, Marblehead, Revere, Saugus, and Warren, Comcast indicated that the retransmission consent fees were incorrect due to a "clerical error," and that it was prepared to re-file these forms. Ex. DTC-Comcast-1-3. The Department directs Comcast to re-file the first four pages of the FCC Form 1240 for all five of those municipalities, incorporating both the inflation and retransmission rate adjustments.

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<sup>7</sup> The 18 communities are Acushnet, Attleboro, Berkley, Dartmouth, Dighton, Easton, Fairhaven, Fall River, Freetown, Mansfield, New Bedford, North Attleboro, Norton, Raynham, Rehoboth, Somerset, Swansea, and Taunton.

(iv) The Inflation Factor Calculation For All Massachusetts Municipalities

For all its Massachusetts FCC Forms 1240, Comcast used an inflation factor of 1.00 for month 12 of the true-up period on Worksheet 1. Exs. Comcast-1-144 at Worksheet 1. According to the instructions to the FCC Form 1240 relating to the inflation worksheet, the operator should use the inflation factor for each month of the true-up period. FCC Form 1240, Instructions, at 24. The FCC uses the United States Commerce Department's Gross National Product Price Index as the appropriate inflation factor to use in claiming an inflation increment for a particular period. *See* FCC Public Notice DA 10-1914, Oct. 4, 2010. The final month of the true-up period, July 2009, is part of the third quarter of 2009 and no inflation factor had been released by the FCC with respect to that quarter at the time of filing. In the event that the factors have not yet been released, the most recent factor available for all subsequent months should be used. FCC Form 1240, Instructions, at 24. The most recent inflation factor available at the time the form was submitted to the Department was 0.00 for the second quarter of 2009.

Notwithstanding these instructions to the FCC Form 1240, Comcast indicated, in response to the Department's Information Request 1, that it had used an average of the prior 12 months to arrive at the inflation factor 1.0181 it used for month 12 of the true-up period. Exhibit DTC-Comcast-1-22. In response to questions from the Department at the evidentiary hearing as to its reason for using this averaging methodology notwithstanding FCC rules, Comcast conceded that the inflation factor had been erroneously calculated. Comcast Rate Hearing Tr. 43:24. As an attachment to its responses to the Department's record requests, Comcast has provided adjusted rates for all communities that include a correction of the true-up inflation figure using the correct factor. Ex. DTC-Comcast-RR-5. The Department has reviewed those adjusted rates, and accepts the rate adjustments related to the inflation factors as filed.

## B. Review of the FCC Form 1205

In its FCC Form 1205 filing, Comcast proposes to adjust its operator selected rates for equipment and installations. *See* Ex. Comcast-145. The FCC Form 1205 calculates rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equip. & Installation*, at 1, 7, 11-13 (June 1996) (“*FCC Form 1205 Instructions*”). A cable operator prepares the FCC Form 1205 on an annual basis using information from the cable operator’s previous fiscal year. *See id.* at 2-3. In this proceeding, the Department reviewed Comcast’s nationwide FCC Form 1205 for the fiscal year ending December 31, 2008. *See* Ex. Comcast-145.

Subscriber charges calculated by FCC Form 1205 may not exceed charges based on actual costs. *See* 47 C.F.R. § 76.923(a)(2). Moreover, the cable operator has the burden of proving that its proposed rates for equipment and installations comply with Section 623 of the Communications Act. *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation, Report & Order & Further Notice of Proposed Rulemaking*, 8 F.C.C.R. 5631, at 5716, ¶ 128 (May 3, 1993) (“*FCC Rate Order*”); 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator).

The Department has previously determined that it is inappropriate for Comcast to include the time element associated with the outside drop in the average installation time for an unwired installation since Comcast already capitalizes the cost associated with the drop portion of the installation. *E.g., In re Comcast Cable Commc’ns, Inc. to establish & adjust the basic service tier programming, equip & installation rates for the cmtys. served by Comcast that are currently subject to rate regulation*, C.T.V./D.T.C. 06-3, at 3 (2007). In addition, the Department had also determined that commissions are a marketing expense that should not be included in the FCC

Form 1205 Schedule B's operating costs. *Id.* Accordingly, the Department has previously directed Comcast to remove labor costs and commissions associated with new installations from its FCC Form 1205. *Id.*

In the current proceeding, Comcast initially submitted a FCC Form 1205 that included capitalized subscriber drops in the average unwired installation rates as well as sales commission expenses. Ex. Comcast-145. A cable operator has a choice to either capitalize subscriber drop labor costs or include these costs in its installation rates. *See FCC Form 1205 Instructions*, at 15 n.2. Comcast's initial filing indicates that it did both. Ex. Comcast-145.

On July 26, 2010, Comcast, in response to the Department's Record Request 1, submitted a revised filing that should have removed the subscriber drops and sales commissions from its calculations. The revised FCC Form 1205 excluded the time element associated with subscriber drops in the same manner as costs were excluded on prior Comcast FCC Forms 1205 that the Department approved. Accordingly, the average hours for an unwired home installation were reduced from 1.4028 hours to 1.1928 hours. *Compare* Ex. Comcast-145 *with* Ex. RR-1. As a result of this decrease in labor hours, the MPR for an unwired home installation was reduced from \$46.59 to \$39.31. *Compare* Ex. Comcast-145 *with* Ex. RR-1. Comcast's current rate for unwired installation, however, is \$38.95, which is lower than the revised MPRs. *See* Exs. Comcast-1 through -144, at Attachment 3. Accordingly, no refund to customers is required. The revisions to the FCC Form 1205 also led to a slight decrease in other MPRs for installations, which were reduced by between \$0.09 and \$0.26. *Compare* Ex. Comcast-145 *with* Ex. RR-1.

A comparison between the original and revised FCC Forms 1205 shows no change in the operating expenses listed on Schedule B. Although commissions should have been removed from the rate form, this expense remains unchanged from the original form. Therefore, the Department finds that Comcast's revised FCC Form 1205 does not comply with the

Department's directives in D.T.C. 04-3/04-4. Accordingly, the Department directs Comcast to re-file its FCC Form 1205 with the commissions expense removed, that Comcast provide a full accounting of all changes made to the revised form from the original, and to take any other steps necessary to bring its revised form into compliance with the Department's directive within 14 days of this Order.

### III. ORDER

Accordingly, after due notice, hearing and consideration, it is

**ORDERED:** That Comcast's Maximum Permitted Rates, as summarized for each municipality on Ex. DTC-Comcast RR-5, with the exception of Danvers, Marblehead, Revere, Saugus, Warren, and Falmouth, are approved; and it is

**FURTHER ORDERED:** That Comcast is to file a refund plan, for Department approval, showing the total amount due to Hatfield subscribers, including principal and interest, together with a timeline for returning the over-collected amount of FRCs to Hatfield subscribers, within 30 days of this Order; and it is

**FURTHER ORDERED:** That Comcast is to re-file the first four pages of the FCC Form 1240 for the municipalities of Danvers, Marblehead, Revere, Saugus and Warren incorporating both the inflation and retransmission rate adjustments referenced in response to Ex. DTC Comcast RR-5, within 30 days of this Order; and it is

**FURTHER ORDERED:** That Comcast's FCC Form 1205, as amended on July 26, 2010, is not approved and that Comcast is to re-file its FCC Form 1205 as directed within 14 days of this Order; and it is

**FURTHER ORDERED:** That the parties comply with all other directives herein.

By Order of the Department

/s/ Geoffrey G. Why  
Geoffrey G. Why, Commissioner

**RIGHT OF APPEAL**

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable state and federal laws.