



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

D.T.C. 19-3

February 20, 2020

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

RATE ORDER

APPEARANCES:

PETITIONER

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INTERVENOR

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I. INTRODUCTION AND PROCEDURAL HISTORY

In this Order, the Department of Telecommunications and Cable (“Department”) approves the Maximum Permitted Rates (“MPR”) and Operator Selected Rates (“OSR”) proposed by CoxCom, LLC d/b/a Cox Communications (“Cox” or “Company”) for basic service tier (“BST”) programming, equipment, and installation for the Town of Holland, Massachusetts.¹

Cox filed Federal Communications Commission (“FCC”) Forms 1240 and 1205 with the Department on March 7, 2019, proposing to establish the MPRs and OSRs for equipment, installation, and BST programming.² *See* Exhs. 1-2. In its FCC Form 1240, Cox proposed an increase to its MPR and OSR for the monthly BST programming rate charged to Holland subscribers. *See* Exh. 3.

With its FCC Form 1205, Cox proposed decreasing the installation rates for three different categories: installation of prewired home, Add/Move/Reconnect A/O at Time of Initial Install, and Add/Move/Reconnect A/O after initial install. *See* Exh. 3. Cox also requested a reduction in its rate for DTAs. *Id.* Cox proposed increasing its rate for addressable converters and CableCARDs. *Id.* Pursuant to FCC regulations, Cox’s proposed BST programming, equipment, and installation rates became effective on June 5, 2019. 47 C.F.R. § 76.933(g); *see also* Exh. 3.

On September 26, 2019, the Department issued a Notice of Public Hearing, an Issuing Authority letter, and Order of Notice in this proceeding. The Department issued its First Set of Information Requests to Cox on October 23, 2019. Cox filed its responses with a Motion for

¹ The documents issued by the Department and submitted by Cox are available on the Department’s docket page for this proceeding, D.T.C. 19-3 at <http://services.oca.state.ma.us/dtc/frmDocketList.aspx>.

² Citations to Cox’s FCC Forms 1205 and 1240 filed on March 7, 2019 are to “Exh. 1” and “Exh. 2.” Citations to Cox’s Rate Summary are to “Exh. 3.”

Protective Treatment of confidential information on November 12, 2019.³ On November 20, 2019, the Town of Holland filed a Motion to Intervene that the Department granted on November 27, 2019. On December 4, 2019, the Department held a public and evidentiary hearing on Cox's proposed rates.⁴ During the public hearing, the Department received remarks from Chair of the Holland Board of Selectman Ernest Fancy. The Department issued four record requests during the evidentiary hearing. Cox submitted its response to those record requests on December 18, 2019, including a second Motion for Protective Treatment of information submitted in response to Record Request 2.⁵

The Department held a conference call with the parties on January 13, 2020 to discuss Cox's decision to include in its submission a Form 1205 for the fiscal year 2017. *See* Exh. 1 (identifying Cox's relevant fiscal year for the form as that ending December 31, 2017). Cox stated on the conference call that it did not have time to compile the data for fiscal year 2018 for this proceeding, because it had been working on the preparation of Form 1205 for fiscal year 2017. The Department wanted to understand the reasoning behind this claim and issued a supplemental record request to that effect the following day on January 14, 2020. Cox provided its answer on January 21, 2020.⁶

The evidence in this proceeding consists of Cox's FCC Forms 1205 and 1240, Rate Summary, and proof of publication of the hearing notice as the exhibits from Cox, the transcripts of the public and evidentiary hearings, seven Department information requests and Cox's

³ Citations to the Department's information requests and Cox's responses are to "IR 1-1" through "IR 1-7." Cox requested confidential treatment of certain retransmission costs provided in response to IR 1-6. The Department will address that request in a separate ruling.

⁴ Citations to the public and evidentiary hearing transcript are to "Tr. at [page]."

⁵ The Department will address this request in a separate ruling.

⁶ Citations to Cox's answer are to Supplemental Record Request DTC-1.

responses, four Department record requests and Cox's responses, and a Department supplemental record request and Cox's response.

II. ANALYSIS AND FINDINGS

After review and consideration, the Department approves Cox's FCC Form 1205 and FCC Form 1240 (both) dated March 7, 2019, and finds the proposed rates to be reasonable in accordance with and subject to the Department's findings below. A summary of the approved rates can be found at Exhibit 3.

A. FCC Form 1205 Review

Cable operators use FCC Form 1205 to calculate 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 Equipment & Installation* (June 1996) at 1. A cable operator prepares its FCC Form 1205 on an annual basis using information from its previous fiscal year. *Id.* at 2. In this proceeding, the Department reviewed Cox's FCC Form 1205 for the fiscal year ending December 31, 2017. *See* Exh. 1.

Subscriber charges established by FCC Form 1205 may not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2). The cable operator has the burden to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act and the FCC's implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a); *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd. 5631, 5716-17, *Report & Order & Further Notice of Proposed Rulemaking* (May 3, 1993). With regard to equipment and installation rates, Cox has chosen to aggregate its costs at the New England System level. *See* Supplemental Record Request DTC-1.

The Department first examines the changes in Cox's MPRs for installations and equipment. As part of this examination, the Department reviews the information and calculations Cox reported on its FCC Form 1205 and the accompanying explanation of the calculations. The Department also considers Cox's responses to Department inquiries and testimony from the evidentiary hearing. As set forth below, the Department finds that Cox's FCC Form 1205 establishes MPRs for installations and equipment that are in compliance with applicable law because Cox properly calculated its MPRs and appropriately chose OSRs for equipment and installation rates at lower rates than the MPRs. *See* 47 C.F.R. § 76.923.

The Department questioned why Cox did not file a Form 1205 with fiscal year 2018 data in this proceeding. The Department, however, ultimately holds that Cox's explanation for not including fiscal year 2018 data is not unreasonable on its face and thus will not require Cox to submit data for fiscal year 2018 in this proceeding.

In *Comcast Cablevision of Detroit, Inc.*, the FCC held that Comcast submitting 1996 fiscal data on February 1, 1998 for its equipment rates was permissible. 15 FCC Rcd. 24,022 (Cab. Serv. Bur. 2000). The FCC reasoned that "in light of the short time between the close of the operator's 1997 fiscal year and the filing date, Comcast's claim that fiscal year 1997 data was not yet available was not unreasonable on its face, and there is no allegation on the record that Comcast lacked diligence in pursuing the availability of this data." *Id.*, ¶ 16. Comcast's claim in that proceeding is similar to the claim by Cox in the proceeding at bar. Cox stated that "[f]iscal year 2018 data was unavailable when Cox prepared and filed the March 7, 2019 FCC Form 1205 because data from the company's general ledger and subsidiary records, which are maintained on a national basis, must be allocated to prepare the Holland, Massachusetts rate filing and that

allocation was unavailable when Cox completed and signed the March 7, 2019 FCC Form 1205.”

Supplemental Record Request DTC-1.

Cox’s explanation for not supplying fiscal year 2018 data in its Form 1205 is not unreasonable on its face. It is not unreasonable that it takes time to separate the New England data from the national data. Furthermore, Holland is the only community in Massachusetts to which Cox provides service so isolating this data might not be a simple task. One difference between this case and *Detroit* is that in that situation Comcast only had one month to compile the prior year’s fiscal data whereas in the case at bar Cox had a little more than two months. The Department notes that under FCC regulations, cable operators using the quarterly filing methodology must file equipment rate adjustments within 60 days of the end of the fiscal year. 47 C.F.R. § 76.923(n)(2). This regulation does not apply to Cox, which uses the annual filing methodology, but Cox filed its Form 1205 in this case 66 days after the end of its 2018 fiscal year, less than one week more than the time period contemplated by the FCC regulation. *Id.*; Exh. 1. Although 60 days should be “sufficient time for closing the books and preparing the rate form,” given the short lag and because there is no allegation in the record that Cox lacked diligence in pursuing the availability of the fiscal year 2018 data, the Department finds that Cox’s explanation for its inclusion of fiscal year 2017 data in its Form 1205 is not unreasonable on its face. *Detroit*, ¶ 16 & n.51.

The Department declines at this time to establish a maximum amount of time between the end of the fiscal year and when a company must include that fiscal year’s data in a filing. A company’s explanation for any lag time should be measured in relation with how long after the

end of the fiscal year the filing was made. In this case, it is enough to say that Cox's explanation regarding its filing 66 days after the end of its fiscal year is not unreasonable on its face.⁷

The Department concludes that Cox's FCC Form 1205 establishes MPRs for installations and equipment that are in compliance with applicable law, and that Cox's OSRs for installations and equipment do not exceed its MPRs. *See* 47 C.F.R. § 76.923(a)(2). The Department finds Cox's proposed rates to be reasonable and approves Cox's FCC Form 1205. *See* 47 U.S.C. § 543; G.L. c. 166A, § 15.

B. FCC Form 1240 Review

A cable operator must calculate its BST programming rates using specific, FCC-created forms, here the FCC Form 1240, incorporating the provisions of its rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. A cable operator may 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 franchise related costs. *See id.* § 76.922(e). To adjust the rates 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 id.* § 76.922(e)(2)(ii)(A), (iii)(A); *Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Reg.*, MM Docket No. 92-266, FCC 95-397, *Report & Order & Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 388, ¶¶ 72-73 (Sept. 22, 1995). 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

⁷ Given this determination, the Department need not address Cox's other arguments. *See* Supplemental Record Request DTC-1.

C.F.R. § 76.922(e)(2)(ii)(A). The FCC has built into its FCC Form 1240 a true-up mechanism to account for actual costs that vary from those projected estimates.⁸

The Department reviews rate adjustments on an FCC Form 1240 pursuant to the FCC's rate regulations. *See id.* § 76.922(a); 207 C.M.R. § 6.01. Specifically, the FCC directs local rate regulators such as the Department to ensure that the approved rates are in compliance with federal law and do not exceed the maximum permitted charges calculated using the FCC's rate forms. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.922(a). The Department may accept, as compliant with the statute, BST rates that do not exceed the approved MPR as determined by federal regulations. *See* 47 C.F.R. § 76.922(a), (c). In addition, the Department shall only approve rates that it deems reasonable. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G.L. c. 166A, §§ 2, 15; 207 C.M.R. § 6.01. A cable operator has the burden of proving that its proposed BST programming rates comply with Section 623 of the Communications Act of 1934, as amended, and the FCC's implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (assigning the burden of proof to the cable operator); *Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, FCC 93-177, *Report & Order & Further Notice of Proposed Rulemaking*, 8 FCC Rcd. 5631, 5716, ¶ 128 (May 3, 1993).

After review and investigation, the Department has determined that the data on Cox's FCC Form 1240 for the Town of Holland were calculated in compliance with federal laws and regulations. *See* Exh. 2. The Department thus approves Cox's proposed MPR. The Department

⁸ The true-up segment includes the compensation for overcharges or undercharges which have occurred during the True-Up Periods. The purpose of the true-up process is to compare the revenue a cable operator collected during the True-Up Period with the amount the operator should have been able to collect. If the sum collected is less than what should have been collected, then the operator is allowed to collect the difference during later rate periods. Conversely, if the sum collected exceeds the amount that should have been collected, then the operator must lower its rates in future rate periods to compensate subscribers for the difference. *Instructions for FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services* at 4-5 (July 1996).

also finds that Cox's proposed OSR does not exceed the approved MPR for the Town of Holland. *Id.* As such, the proposed OSR complies with federal laws and regulations, and is reasonable. 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. § 76.922(a), (c). Accordingly, the Department approves the increase in Cox's BST programming rate to \$34.00. The Department recognizes Chairman Fancy's opposition to the rate increases that Cox subscribers have faced in recent years. Tr. at 5-8. However, under the FCC's regulations, Cox's MPR of \$47.24 is permissible and thus it is permissible for Cox to charge \$34.00 per month for the BST.⁹

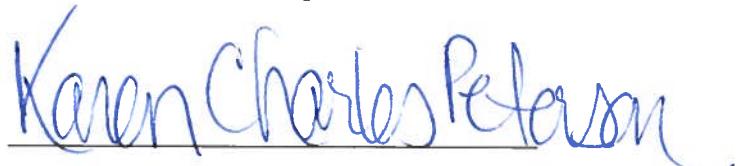
III. ORDER

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

ORDERED: That the MPR for BST programming listed on Cox's FCC Form 1240 for the Town of Holland, as filed on March 7, 2019 and the proposed OSR are APPROVED; and it is

FURTHER ORDERED: That the MPRs for equipment and installation listed on Cox's Form 1205, as filed on March 7, 2019, and the proposed OSRs are APPROVED.

By the Order of the Department

A handwritten signature in blue ink that reads "Karen Charles Peterson". The signature is fluid and cursive, with "Karen" and "Peterson" being the most prominent parts.

Karen Charles Peterson, Commissioner

⁹ The issue that Chairman Fancy mentioned regarding the loss of Boston-based stations is outside the scope of this rate proceeding. Tr. at 7. Additionally, Cox raised the issue of whether, under 207 C.M.R. § 1.06(6)(f), Holland needed counsel in order to cross-examine witnesses. Tr. at 44-47. Cox's main concern in raising this issue was that any cross-examination be limited to the scope of this proceeding. *See id.* The Department took Cox's concern under advisement at the hearing, and thereafter the Hearing Officer appropriately limited Holland's cross-examination to the subject of the proceeding. *Id.*; *see also* 207 C.M.R. 2.03 (permitting the Department upon good cause to waive any particular provision of Title 207); *cf. In re Verizon Serv. Quality in W. Mass.*, D.T.C. 09-1, *Hearing Officer's Ruling Regarding the Town of Leverett's Participation as Intervenor*, (Mar. 5, 2010) (permitting the Town of Leverett to participate in the proceeding without counsel).

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may be brought to the Federal Communications Commission pursuant to 47 C.F.R. § 76.944.