



## THE COMMONWEALTH OF MASSACHUSETTS

### DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 07-6

November 17, 2008

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

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#### RATE ORDER

APPEARANCES: Steven J. Horvitz, Esq.  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, DC 20006-3402

FOR: COMCAST CABLE COMMUNICATIONS, INC.  
Petitioner

Rodney G. Hoffman, Esq.  
Deutsch Williams Brooks DeRensis & Holland, PC  
One Design Center Place, Suite 600  
Boston, MA 02210

FOR: THE TOWN OF RANDOLPH  
Intervenor

Peter J. Epstein, Esq.  
Epstein & August  
101 Arch Street, 9<sup>th</sup> Floor  
Boston, MA 02110

FOR: CITY OF SPRINGFIELD AND TOWN OF DANVERS  
Intervenors

Kathleen Tarpey Breck, Esq.  
Deputy City Solicitor  
City of Springfield Law Department  
Office of the City Solicitor  
36 Court Street  
Springfield, MA 01102

FOR: CITY OF SPRINGFIELD  
Intervenor

John J. Clorite  
Chairman, Cable Advisory Committee  
145 Windward Drive  
Somerset, MA 02726

FOR: THE TOWN OF SOMERSET  
Intervenor

## **I. INTRODUCTION**

On November 1, 2007 and December 20, 2007, Comcast Cable Communications, Inc. (“Comcast”) filed with the Department of Telecommunications and Cable<sup>1</sup> proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Forms 1240 for its 219 Massachusetts communities that were subject to rate regulation at the time of filing.<sup>2</sup> Two FCC Forms 1240 were filed for its cable system in Stoneham. The Department docketed this filing as D.T.C. 07-6. Since the inception of this proceeding, the FCC by Memorandum Opinion and Order has deregulated 72 of these Massachusetts communities served by Comcast based upon a finding that those communities are subject to effective competition. *See* Exhibit DTC 2 (listing communities deregulated between inception of proceeding and date of hearing); July 9, 2008 letter from Alejandra Hung to Issuing Authority (listing communities deregulated after date of hearing). Accordingly, the rates investigated in this proceeding pertain only to the 146 Massachusetts communities that are currently subject to rate regulation. *See* Exhibit DTC 1.<sup>3</sup> In conjunction with its FCC Form 1240 filings, Comcast

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<sup>1</sup> Pursuant to Governor Patrick’s Reorganization Plan, Chapter 19 of the Acts of 2007, the Department of Telecommunications and Energy ceased to exist, effective April 11, 2007. The Department of Telecommunications and Cable has assumed the duties and powers previously exercised by the Cable Division under General Laws, Chapter 166A. References in this Rate Order to the “Cable Division” refer to the time period before April 11, 2007; references to the “Department” refer to the time period commencing on April 11, 2007. Documents in continuing proceedings, such as exhibits, are described as “Department” documents instead of “Cable Division” documents, regardless of when they were filed.

<sup>2</sup> The regulated communities are listed in Exhibit DTC 1.

<sup>3</sup> Exhibit DTC 1, which lists 187 regulated Comcast communities, was entered into the record at the hearing on June 25, 2008. Since the hearing, however, forty of the communities listed on that exhibit have been deregulated. They are as follows: (1) Abington; (2) Acton; (3) Andover; (4) Aquinnah; (5) Belmont; (6) Bourne; (7) Boxborough; (8) Boxford; (9) Edgartown; (10) Falmouth; (11) Franklin; (12) Georgetown; (13) Halifax; (14) Hamilton; (15) Hopkinton; (16) Ipswich; (17) Kingston; (18) Lincoln; (19) Littleton; (20) Lynn; (21) Marlborough; (22) Marshfield; (23) Nahant; (24) North Reading; (25) Oak Bluffs; (26) Pembroke; (27) Plymouth; (28) Plympton; (29) Reading; (30) Rockland; (31) Sandwich; (32) Stoneham; (33) Swampscott; (34) Sudbury; (35) Tewksbury; (36) Wellesley; (37) Wenham; (38) West Newbury; (39) Westwood; and (40) Winchester. *See* July 9, 2008 letter from Alejandra Hung to Issuing Authority. Comcast submitted two Forms 1240 for Stoneham. After accounting for the deregulation of Stoneham and the other communities listed above, there are 146 Massachusetts communities served by Comcast which are still subject to rate regulation.

filed a nationwide FCC Form 1205, with proposed equipment and installation rates based on its fiscal year ending December 31, 2006. *See* Exhibit Comcast 189. Comcast also submitted a second Form 1205 which contained adjustments specific to its Massachusetts communities. Exhibit Comcast 189A. Comcast implemented changes to its BST programming, equipment, and installation rates, effective February 1, 2008 (Tr. at 24-5).

On June 25, 2008, the Department held a public and evidentiary hearing on Comcast's rate filings. The Cities of Brockton and Springfield and the Towns of Danvers, Falmouth, Medway, Randolph, Somerset, and Yarmouth were granted leave to intervene in this proceeding (Tr. at 6). Representatives appeared on behalf of four of the intervening parties, namely Springfield, Danvers, Somerset and Randolph. (Tr. at 2-5).

The evidentiary record consists of a list of all the regulated Comcast communities as of November 1, 2007, admitted as Exhibit DTC 1; a list of all communities deregulated by the FCC between November 1, 2007, and June 25, 2008 (the date of the hearing), admitted as Exhibit DTC 2; Comcast's rate forms admitted as Exhibits Comcast 1 through 189A; Comcast's responses to Department information requests admitted as Exhibits DTC-Comcast 1 through DTC-Comcast 27; statements filed by Mayor Domenic Sarno, Issuing Authority for the City of Springfield admitted as Exhibit DTC-Springfield 1; Comcast's responses to Springfield's information requests admitted as Exhibits Springfield-Comcast 1 through Springfield-Comcast 7; Comcast's responses to record requests issued by (a) the Department (Exhibits DTC-Comcast RR-1 through DTC-Comcast RR-7), (b) Danvers (Exhibits Danvers-Comcast RR-1 to Danvers-Comcast RR-2), (c) Somerset (Exhibit Somerset-Comcast RR-1), and (d) Springfield (Exhibit Springfield-Comcast RR-2);<sup>4</sup> and Springfield's responses to records requests issued by the Department (Exhibits DTC-Springfield RR-1 to DTC-Springfield RR-2).

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<sup>4</sup> Exhibit Springfield-Comcast RR-1 does not exist. This exhibit was inadvertently marked incorrectly.

Additionally, on November 13, 1997, the Cable Division accepted a settlement agreement related to Media One's (Comcast's predecessor-in-interest) treatment of franchise-related costs ("the Settlement Agreement"). *See Division Acceptance of Franchise Related Costs Settlement Agreement Submitted by the Parties*, Docket No. Y-96. The Department hereby takes administrative notice of that settlement agreement.

## **II. REVIEW OF THE FCC FORM 1205**

In this proceeding, the Department reviews Comcast's FCC Form 1205 based on the fiscal year ending December 2006. *See* Exhibits Comcast 189 - 189A.<sup>5</sup> The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. *Instructions for FCC Form 1205* at 7, 12-13. A cable operator prepares the FCC Form 1205 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 may not exceed charges based on actual costs as determined in accordance with the FCC's regulatory requirements. *See* 47 C.F.R. § 76.923(a)(2). The burden of proof is on the cable operator to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act of 1934, as Amended (the "Communications Act") and implementing regulations. *See* 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*

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<sup>5</sup> Comcast submitted two separate Forms 1205 to the Department. One Form 1205 is Comcast's national consolidated form. *See* Exhibit Comcast 189. The other Form 1205, which is specific to Massachusetts, includes adjustments to Comcast's national forms relating to treatment of salespersons' commissions and labor costs incurred in connection with initial installations. *See* Exhibit Comcast 189A. For a discussion relating to the history of Comcast's submission of two separate Forms 1205, refer to *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, Order On Petition For Reconsideration And On Compliance Filing*, CTV 04-3/04-4 (2006). For purposes of this Order, the Department has relied on the Form 1205 specific to Massachusetts (Exhibit Comcast 189A).

(“FCC Rate Order”). *See also* 47 C.F.R. § 76.937(a) (regulation assigning burden of proof to the cable operator).

Based on our review, we find that the FCC Form 1205 filed by Comcast for the period commencing February 1, 2008, and admitted as Exhibit Comcast 189A, establishes maximum permitted rates (“MPRs”) for equipment and installation that are in compliance with applicable law. We further find that Comcast is charging actual rates for equipment and installation that do not exceed the MPRs established by its FCC Form 1205. Comcast’s proposed and approved charges for equipment appear on the Rate Schedule appended hereto, beginning at page A-1.

### **III. REVIEW OF THE FCC FORMS 1240**

#### **A. Introduction and Standard of Review**

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 franchise related costs (“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, Commission 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; however, such projections are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

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 rates are in compliance with the Communications Act, 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, as 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(c). 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).

B. Discussion And Analysis

1. Canton – Programming Costs

FCC instructions clearly specify which programming costs are to be included in the Form 1240. *FCC Form 1240 Instructions*. The Form 1240 lists the projected period as well as a true-up period, the latter of which allows for the accounting of differences in actual versus projected costs. For the true-up period, actual programming costs must be included in the Form 1240. *Id.* at 39, ln. 701. In reviewing the Canton filing, the Department noted that the reduction in programming costs was not consistent with reductions found in the Form 1240 filings for most other Massachusetts communities. *See* Exhibit Comcast 29. The Department requested Comcast to explain and reconcile this difference. *See* Exhibit DTC-Comcast 7. Comcast noted that a contributing factor to the difference in programming costs was a “reduction in invoiced rates from one of the program providers during this time. That reduction was partially offset by [a]

slight increase for other programmers.” *Id.* Comcast also noted that they had discovered a formula error in Canton’s Form 1240, namely the programming costs omitted two changes during the true-up period that had been implemented on all other Comcast MA forms. *Id.* After implementing these changes, the revised form showed a reduction in the maximum permitted rate (“MPR”) from \$11.61 to \$11.58. *Id.*

The Department has reviewed the revised Form 1240 for Canton<sup>6</sup> and has determined that Comcast has properly corrected for the programming cost reductions that were not included on the original filing. We accept the revised form as filed.

## 2. Medway – Program Coordinator Position

For the duration of the Medway license, Comcast has been collecting \$15,000 per year for a “program coordinator” for the access studio. *See* DTC-Comcast-RR-2; (Tr. at 20-24). After recognizing that the program coordinator position was eliminated after the 1998 renewal license, Comcast removed the cost for this position from its 2008 filing with the Department and stopped collecting for it in the current Form 1240. DTC-Comcast-RR-2; (Tr. at 21). However, Comcast did collect \$135,000 during the first nine years of the license, through February, 2008. DTC-Comcast-RR-2. The collection of these FRCs was improper. FRCs can only be included in the regulated rate to the extent that they are actually incurred. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A) (limiting FRCs to be included on Form 1240 to those that are reasonably certain).

Historically, access studios have been funded using one of two different methods. The cable operator either (1) runs the studio itself or (2) provides grants to an access corporation so the community can run the studio.<sup>7</sup> In Medway, the renewal license provided that an access

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<sup>6</sup> The revised Form 1240 for Canton was submitted on June 9, 2008, and admitted as Exhibit DTC-Comcast 7, Exhibit 1.



corporation would run the studio and use franchise fees to fund its operations. Under the previous license, Comcast hired and paid the studio coordinator directly. In other words, Comcast would collect FRCs from Medway subscribers and use the funds to pay the access coordinator. However, when the position was eliminated in the renewal license, the FRC amount was never removed from subscriber bills. Comcast simply collected monies from Medway subscribers and never disbursed the monies back to the community (Tr. at 21-23).

Given that the FRC element for Medway for the past nine years was overstated, the Department finds that Comcast must return the overcharges, with interest, to Medway subscribers. *See, e.g., 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, Rate Order, Docket No. CTV 05-3 at 17 (September 26, 2006) (ordering refund with interest); Continental Cablevision of Massachusetts, Inc. d/b/a Continental Cablevision, Docket No. Y-93 at 16-17 (May 20, 1994) (same); 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 provide a calculation showing the total amount due to subscribers, including principal and interest, for the period of the overcharge. In addition, Comcast may show the amount of the bill credit (including principal and interest) if refunded evenly over a period of up to twelve months.

3. Fairhaven – Franchise Related Costs

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*Compare* Town of Framingham, Cable Renewal License, Article 5 (May 20, 1999) and Town of Fairhaven, Cable Television Renewal License, Article 4 (June 15, 1996) (both licenses providing that cable operator to maintain and operate access studios) with City of Newton, Cable Television Renewal License, Article VII (March 1, 2001) and Town of Burlington, Cable Television License, Article 6 (October 20, 2007) (both licenses providing that access corporation to maintain and operate access studios with funds paid by cable operator).

In response to an information request submitted by the Department, Comcast indicated that it had signed a franchise renewal license with the Town of Fairhaven in May, 2008. Exhibit DTC-Comcast 12. Based on this renewal license, Comcast indicated that it would be implementing a new percentage of revenue franchise fee in Fairhaven during the projected period on the Form 1240 for Fairhaven.<sup>8</sup> *Id.* Since Comcast implemented the new percentage of revenue franchise fee during the projected period, it indicated that it would adjust the FRCs listed on its original FRC Worksheet for Fairhaven so that Fairhaven customers would not be overcharged for FRCs. Accordingly, Comcast submitted a revised FRC Worksheet for Fairhaven after it implemented the change to the percentage of revenue franchise fee. Exhibit DTC-Comcast-RR-5. After review, the Department determines that Comcast has properly reduced its FRCs to comply with the terms of the renewal license in Fairhaven and to account for the new percentage of revenue franchise fee in Fairhaven.

In preparing its Form 1240 submitted in November 2007, Comcast used costs from the previous license to calculate the FRCs in Fairhaven for the projected period ending January 31, 2009. Exhibit Comcast 50. As noted above, Comcast signed a renewal license with Fairhaven in May, 2008. Comcast indicated that it intended to adjust for any over collection of FRCs through its true-up calculation at the subsequent rate change in February of 2009. Exhibit DTC-Comcast 12. At the rate hearing, the Department inquired when Comcast would reduce or eliminate its FRCs related to the previous license in order to offset the new percentage of revenue franchise fee being implemented during the projected period (Tr. at 30). In response to a record request

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<sup>8</sup> A percentage of revenue franchise fee is an amount charged to subscribers as a separate line item on their bills, which is calculated as a percentage of a cable subscriber's bill. For example, if a customer's monthly bill was \$100 and the operator charged a 5% revenue franchise fee, the customer would pay \$5 in franchise fees. In Fairhaven, Comcast was charging 1.75% as a revenue franchise fee under its old license. Town of Fairhaven, Cable Television Renewal License, § 4.2 (June 15, 1996). Under the renewal license executed in May, 2008, the percentage of revenue franchise fee increased to 4%. Town of Fairhaven, Cable Television Renewal License, § 6.4 (May 19, 2008). Under federal rules, franchise fees may not exceed 5% of a cable operator's gross revenues for any twelve-month period. 47 U.S.C. § 542(b).

issued by the Department, Comcast indicated that, pursuant to the new license, it implemented an increase to the percentage of revenue franchise fee in Fairhaven beginning on June 13, 2008.<sup>9</sup>

Exhibit DTC-Comcast-RR-5. Comcast further indicated that on August 1, 2008, it would adjust the FRCs as well, reducing the total funding required under the license from \$100,000 (or \$10,000 per year) by \$70,587 (or \$7,587 per year) to \$29,413 (or \$2,941.30 per year). *Id.* The overall effect of this decrease will be a per-subscriber FRC reduction from \$0.64 to \$0.16 beginning August 1, 2008, based upon a revised FRC Worksheet submitted by Comcast. *Id.*<sup>10</sup>

In calculating the FRCs for all its communities, Comcast averaged all costs over the life of the license. This has allowed Comcast to calculate a single FRC rate to be used for the span of the license rather than having the amount adjusted each year when certain new obligations took effect or others expired. *In the Matter of Media One of Massachusetts, Inc. d/b/a AT&T Broadband, Rate Order*, Docket No. CTV 00-1 at 5-6 (November 22, 2000) (cable operator averaged programming costs over term of license and later made adjustments only where necessary). The Department has supported this methodology as it leads to more rate stability and clarity for subscribers. *In the Matter of Media One of Massachusetts, Inc., et. al., Rate Order*, Docket No. Y-99 INC, Y-99 EQU at 4-5 (December 22, 1999). When licenses expire during a particular projected period, Comcast continues to use the same cost figures, assuming that any future license would have no reduction in FRCs, unless Comcast knows that the community will no longer be funding its access operation using FRC monies collected from subscribers.<sup>11</sup>

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<sup>9</sup> See *supra* at n. 8.

<sup>10</sup> On August 4, 2008, Comcast filed an amended response to Department record request 5. The amended response was admitted as Exhibit DTC-Comcast-RR-5 and replaced Comcast's earlier response to that record request.

<sup>11</sup> In a number of communities, funding for access corporations has shifted from operational grants to a percentage of revenue franchise fee, an amount that is not included in the basic rate but, rather, charged as a separate line item on the bill.

In this case, Comcast has reduced the FRC segment during the year in order to offset, to some degree, the impact of implementing the increased percentage of revenue franchise fee during the projected period. This allows Comcast to comply with license terms and to avoid a more complicated true-up next year when subscriber overcharges would need to be offset with franchise fee undercharges in order to ensure the community receives the amount it is entitled to under the license.

We find that Comcast has correctly adjusted the FRC and franchise fee charges in Fairhaven to take the new license into account. Therefore, we accept the Form 1240 and revised FRC Worksheet submitted for Fairhaven as filed.

4. Springfield and Randolph – Franchise Related Costs

One issue presented by Springfield and Randolph (collectively “the complaining intervenors”) during this proceeding concerns the FRCs that Comcast may lawfully pass on to subscribers under their existing renewal license agreements. At the hearing, the Department requested that the parties submit briefs on the following issue:

With respect to Franchise Related Costs [“FRC’s”] from 1998 forward, are only the incremental costs at the time of renewal subject to the pass-through limitation in the renewal license, or is the entire amount of the FRC’s subject to the pass through limitation?

(Tr. at 110-11).

Randolph and Springfield submitted their initial briefs on July 9, 2008, and July 11, 2008, respectively. Comcast submitted its reply brief on July 28, 2008.

a. Parties’ Positions

Both Springfield and Randolph complain that Comcast has been passing through all FRCs to subscribers despite limitations placed on what FRCs, if any, can be passed through to subscribers under each community’s respective license agreement. *See* Brief of Intervenor City

of Springfield (“Springfield Brief”) at 4-5; Brief of Intervenor Town of Randolph Concerning Overpayment of “Pass-Through” Costs Under Current License (“Randolph Brief”) at 1-2.

Comcast argues that the license agreements must be read in the context of industry usage and a previously executed agreement involving the treatment of FRCs. *See* Brief of Comcast Cable Communications, Inc. (“Comcast Brief”) at 2.

### 1. Springfield

Springfield alleges that Comcast has impermissibly passed through a number of FRCs to subscribers, including costs related to the following: (1) construction of an advanced institutional network; (2) public, educational, governmental (“PEG”) access/local origination channels and support; (3) operation of a community studio and equipment related thereto; and (4) funding for a telecommunications and economic development fund. *See* Springfield Brief at 4-5.

Springfield bases its argument on the plain language of the Springfield Cable Television renewal license. Specifically, Section 8.1(d) of the renewal license contains the following pass-through limitation clause:

The Issuing Authority acknowledges that under the 1992 Cable Television Consumer Protection and Competition Act, certain costs of PEG Access and other license requirements may be passed through to Subscribers in accordance with federal law. The Issuing Authority and the Licensee, in consideration of the mutual promises and undertakings reflected in this Renewal License, agree that the cost of PEG Access and license requirements contained in Sections 3.5 (Construction of an Advanced Institutional Network), Section 6.1 (PEG Access/Local Origination Channels and Support), Section 6.2 (Community Studio and Equipment), Section 6.3 (Operation of Community Studio; Staff and Support), Section 6.4 (Funding for Telecommunications and Economic Development Fund) and Section 8.2 (Senior Discount) will not be passed through as external franchise related costs to Subscribers so long as this Renewal License remains in force and effect, notwithstanding any provision of law, as may be amended, to the contrary.

Exhibit DTC-Springfield 1, Attachment 5.

Springfield alleges that the pass-through limitation clause prohibits Comcast from passing through the entire amount of the FRCs listed in Section 8.1(d) of its renewal license. Springfield Brief at 1, 4-5. Springfield contests Comcast's assertion that the 1997 Settlement Agreement ("Settlement Agreement")<sup>12</sup> is the governing document with respect to FRCs. *Id.* at 1-3. Springfield suggests that the renewal license is the operative agreement for the following reasons: (1) the plain language of the renewal license is clear that Comcast would not pass through the full costs of the FRCs to subscribers; (2) there is no reference to the Settlement Agreement in the renewal license; and (3) there is no evidence that Springfield's negotiators knew about the Settlement Agreement at the time the renewal license was signed. Springfield Brief at 2-3. Thus, Springfield argues that this issue must be decided solely based on the terms of the renewal license, which it claims supports its position.

In addition to its reliance on the language of the renewal license, Springfield relies on a memorandum dated February 25, 1998, in which Comcast's predecessor, Media One, sets forth the terms of various in-kind benefits required by the renewal license.<sup>13</sup> (Tr. at 78-9). That memorandum states under the title "No Pass-Through of In-Kind Benefits":

Notwithstanding any law or regulation to the contrary, the City and Media One would waive any rights under applicable law to pass on the cost of in-kind benefits to City cable television subscribers, *i.e.*, the subscribers' monthly cable television bills would *not increase* as a result of Media One's payment of in-kind benefits to the City.

Exhibit DTC-Springfield 1, Attachment 1 (emphasis added).

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<sup>12</sup> The Settlement Agreement permits incremental increases in FRCs to be passed through to subscribers. For a more complete discussion of the Settlement Agreement and its terms, *see infra* at 16-18. The Settlement Agreement was approved by the Cable Division by Order on November 13, 1997, and precedes the execution of both the Randolph renewal license (October 31, 1998) and the Springfield renewal license (January 29, 2000). *See Division Acceptance of Franchise Related Costs Settlement Agreement Submitted by the Parties*, Docket No. Y-96 INC (1997); Town of Randolph, Cable Television Renewal License (1998); City of Springfield, Renewal Cable Television License (2000).

<sup>13</sup> A copy of the memorandum was admitted as Exhibit DTC-Springfield 1, Attachment 1. The term "in-kind benefits" refers to payments of capital costs including construction and maintenance of facilities.

With regard to the institutional network (“I-Net”) Costs (up to \$1,600,000), the Prior I-Net Maintenance Costs (\$70,990), and the Prior Capital Costs (\$533,333), Springfield argues that these costs were not required by the renewal license and, thus, there is no legal basis for Comcast to charge these amounts to Springfield subscribers. Springfield Brief at 4. With respect to the costs related to the Equipment for Community Center (\$300,000), the Operating Budget (\$300,000), and the I-Net Maintenance (\$41,934), Springfield argues that since these costs do not have a corresponding FRC or payment amount on the FRC Worksheet that these costs should not be included on that worksheet. *See* June 10, 2008 letter from Issuing Authority to Alejandra K. Hung, Esq. at 4 (admitted as part of Exhibit DTC-Springfield 1). Finally, Springfield alleges that Comcast is impermissibly charging subscribers for a \$475,000 principal payment for prior operating costs. Springfield Brief at 4. Springfield argues that this payment has already been fully amortized over the past twenty-five years. *Id.*

## 2. Randolph

Randolph makes a similar argument, stating that Media One (now Comcast) and the Town agreed that Media One would pay a PEG Fee of \$125,000 per year to the Town’s access corporation and that only \$15,000 per year of that amount would be passed through to the Town’s subscribers. *See* Randolph Brief at 1-2. Randolph asserts that this agreement is illustrated in Section 6.4(a) of its renewal license, which states:

The Licensee shall provide quarterly cash payments of thirty-one thousand two hundred fifty dollars (\$31,250) to the Access Corporation, for PEG Access purposes...in years one (1) through ten (10). Fifteen thousand dollars (\$15,000) per year is subject to pass through to Randolph Subscribers.

(Tr. at 51-52). Randolph argues that Comcast has been impermissibly passing through \$115,000 per year in PEG access payments since 1998 to subscribers in violation of the renewal license. *See e.g.*, Tr. at 51-65. Randolph disputes Comcast’s interpretation that the \$15,000 pass-through

limitation only applies to incremental increases in FRCs. Randolph Brief at 7-8. Randolph

argues that the renewal license is controlling, and that the plain meaning of the renewal license limits the FRCs subject to pass-through to \$15,000. *Id.* at 6-7.

In support of its argument, Randolph relies on the affidavit of Robert W. Stone, the current Chair of the Cable Advisory Committee who was a Chair of the Committee in 1998 when the renewal license was negotiated. Randolph Brief at 5. Mr. Stone testified that the treatment of the \$125,000 PEG fee was specifically negotiated and that the representatives of Comcast's predecessor expressly acknowledged that the pass-through was limited to \$15,000. (Tr. at 59-60). While Comcast asserts that the language was a "placeholder" for what was understood by the parties to be a \$100,000 fixed annual pass-through for PEG fees, Mr. Stone testified directly to the contrary. *Id.* Additionally, Randolph argues that the Settlement Agreement was never mentioned by Media One during the negotiations of the renewal license, and therefore is neither incorporated therein nor the controlling document. Randolph Brief at 4-5. Randolph further asserts the fact that the Settlement Agreement was never mentioned during the negotiations is evidence that the parties never intended for it to be incorporated into the renewal license. *Id.* at 7-8.

### 3. Comcast

Comcast argues that the term "pass-through," as used by the complaining intervenors in the renewal licenses, is a term of art that must be interpreted consistent with industry usage and the Settlement Agreement. *See* Comcast Brief at 2. Comcast contends that the Settlement Agreement is binding on the parties, and therefore requires Comcast to apply the "pass-through" limitation on FRCs only to the incremental increase in costs resulting from the renewal of a license (so called "incremental FRCs"). *Id.* at 5-6. In other words, Comcast asserts that if, in



fact, the Settlement Agreement controls FRCs, the pass-through limitation contained in the renewal license only applies to the incremental increase in FRCs from the prior license. *Id.*

Comcast contends that, at the time the renewal licenses went into effect, Springfield and Randolph knew their respective licenses only prevented rate increases attributable to new FRC obligations. Comcast Brief at 2-3, 6-7. Comcast points out that the behavior of the complaining intervenors is consistent with Comcast's interpretation because the intervenors have not raised the current issue until this rate proceeding, ten years after the renewal licenses were negotiated. *Id.* at 8-9. Additionally, Comcast asserts that if Springfield and Randolph previously interpreted their licenses as they do now before the Department, the municipalities would have expected significant rate reductions as FRC costs from old obligations would be excluded from the rate calculations. *Id.* at 6-7.

In support of its argument, Comcast relies on the testimony of Daniel M. Glanville, Comcast's Regional Vice-President, Government Affairs. *See, e.g.* Comcast Brief at 4. Mr. Glanville testified that he was present during the negotiations and signing of the renewal license for Springfield (Tr. at 104-5). He further testified that the intent of the parties was to remain revenue-neutral with respect to FRCs, and that, at no time, did Springfield state that it intended or believed that there would be a decrease in basic rates. *Id.*

b. Analysis and Findings

In determining whether the Springfield and Randolph Forms 1240 accurately account for FRCs, the core issue before us is whether the language limiting pass-through of costs applies only to those incremental cost increases related to the renewal licenses (incremental FRCs) or if the language also prohibits pass-through of embedded FRCs from the prior licenses. The resolution of this issue requires a determination relating to the legal effect of the Settlement Agreement and the renewal licenses for Springfield and Randolph. Based upon our review of the

testimony and documentary evidence, we conclude that only incremental increases in FRCs related to the renewal licenses are subject to the pass-through limitation.

Our analysis begins with the Settlement Agreement. On November 13, 1997, the Cable Division accepted the Settlement Agreement related to Media One's, Comcast's predecessor-in-interest, treatment of FRCs. *See Division Acceptance of Franchise Related Costs Settlement Agreement Submitted by the Parties*, Docket No. Y-96 INC (1997). Pursuant to the Settlement Agreement, the terms of the Agreement "will be applied prospectively to all future Media One rate filings."<sup>14</sup> *Id.* at 1 ¶ 1. The Settlement Agreement, which clearly anticipates "pass-throughs" indicates that a "pass through" only exists where there is an increase in the FRCs as a result of new obligations under a renewal license. *Id.* Specifically, the Settlement Agreement shows in Example II (A) that there is no pass-through where, under the terms of the renewal license, the PEG access payment remains the same as in the previous license. *Id.* at 2-3. Similarly, in Example I (C), where the original license required an annual \$100,000 payment for local programming and the renewal license required an annual \$150,000 payment, Media One agreed to pass through "only the incremental \$50,000" as an FRC. *Id.* at 2. In other words, the cable operator would "pass through only the incremental amount." *Id.* at 3. Therefore, the parties to the Settlement Agreement understood that existing FRCs were to be treated as an embedded part of the basic service tier ("BST") rate and that only incremental increases in FRCs associated with the renewal license would be passed through to subscribers. *Id.* at 2-3.<sup>15</sup> Notably, there is no discussion in the Settlement Agreement relating to a reduction in existing FRCs as a result of renewal of cable licenses.

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<sup>14</sup> The Settlement Agreement preceded both renewal licenses at issue. *See supra* at n. 12.

<sup>15</sup> We have previously adopted a consistent interpretation of the Settlement Agreement. *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, Rate Order*, Docket No. CTV 05-3 at 24 (September 26, 2006).

FCC precedent supports this interpretation of “pass-through” provisions. Two years prior to the Settlement Agreement, the FCC stated BST rates may be adjusted to reflect FRCs that a cable operator would not have incurred but for franchise requirements. *See* November 13, 1995 letter from FCC to Cable TV & Communications Advisory Committee. Additionally, the FCC stated that where the costs of complying with franchise requirements remains constant upon the renewal of a license, the BST rates should not be adjusted. *Id.* Thus, while the FCC did not use the words “pass through,” the gravamen of the analysis focused on incremental costs associated with the renewal of a cable operator’s license and not embedded FRCs from previous licenses.

In situations where there are multiple contracts relating to the same subject matter, established principles of contract law require that the contracts be construed together. *Clark v. State Street Trust Co.*, 270 Mass. 140, 150 (1930); *Gilmore v. Century Bank and Trust Co.*, 20 Mass. App. Ct. 49, 56 (1985); *Thomas v. Christensen*, 12 Mass. App. Ct. 169, 174 (1981). In this case, the Settlement Agreement and the two renewal licenses all address the treatment of costs passed through to subscribers. Based on the identity of subject matter covered by the three contracts (i.e., treatment of FRCs), we must read them together in order to enforce the intent of the parties. *Clark*, 270 Mass. at 150. In light of this legal precedent, the positions of Springfield and Randolph – that the respective renewal licenses govern the treatment of FRCs in their entirety and that the Settlement Agreement has no legal effect – cannot stand. The Settlement Agreement, which was accepted by the Cable Division by Order, is legally binding on all parties of that docket, including Comcast as the successor-in-interest to Media One. *Bennett v. Com’r of Food and Agriculture*, 411 Mass. 1, 5-6 (1991). *See generally In the Matter of Media One of Massachusetts, Inc., Media One Group, Inc., and AT&T Corp. v. City Manager of the City of Cambridge, Interlocutory Order on Scope of the Proceeding*, Docket No. 99-4 (September 1, 2000) (upon transfer of cable franchise license, successor-in-interest deemed to “step into the

shoes of [predecessor]”). Moreover, at least as to Springfield, Section 9.12 of the renewal license incorporates by reference all federal and state laws, including the rules and regulations of the Cable Division. Exhibit DTC-Springfield 1, Attachment 5. Thus, the Springfield license explicitly incorporates the Settlement Agreement. *See Leasecomm Corp. v. Crockett*, 1998 WL 15935 (two separate contracts construed together where one contract specifically referenced the other).

Moreover, the plain language of the Settlement Agreement provides that the terms of the Agreement “will be applied prospectively to all future Media One rate filings.” Settlement Agreement at ¶ 1. In addition, the examples contained in the Agreement indicate that its provisions apply to license renewals. *See, e.g.*, Settlement Agreement, Examples I (C) and II (A) (both addressing treatment of pass-throughs based on provisions in renewal licenses and previous licenses).

In light of the foregoing, the Settlement Agreement applies to cable license renewals and is binding on the parties. As stated above, the underlying intent of the Settlement Agreement was to treat existing FRCs as an embedded part of the BST rate and to pass-through only incremental increases in FRCs associated with the renewal license to subscribers. The provisions in the Springfield and Randolph renewal licenses relating to FRCs must be read together with the Settlement Agreement. Specifically, Section 8.1(d) of Springfield’s renewal license and Section 6.4(a) of Randolph’s renewal license, which both contain pass-through limitations, must be construed to mean that only incremental FRCs will be passed through to subscribers.

The behavior of Springfield and Randolph following the execution of their renewal licenses further supports the conclusion that the pass-through limitations in the renewal licenses applied only to incremental FRCs and not existing FRCs. In Springfield, the renewal license in question was signed in 2000, eight years ago. Meanwhile, in Randolph, the license was signed in

1998, ten years ago, and it recently expired. Specifically, if the pass-through limitations applied to all FRCs, the maximum permitted rates (“MPRs”) for each community would have decreased substantially. However, the MPRs did not decrease. If the communities truly expected that any embedded FRCs would not be passed through to subscribers, they would have expected immediate FRC reductions. Significantly, neither Springfield nor Randolph previously raised this issue in any of the annual cable rate cases since the licenses were executed, eight and ten years ago respectively.<sup>16</sup> Regardless of the presentation of FRC rate elements on the bill, a rate reduction due to the removal of FRCs is something that should have become evident to the communities over the past eight or ten years.

A review of BST rates during the terms of the renewal licenses also supports Comcast’s position that only incremental increases in FRCs were passed through to subscribers. As an example, Springfield’s 2002 rate card shows no incremental increases in FRCs while the 2002 rate card for Randolph shows incremental FRCs of \$0.27.<sup>17</sup> *AT&T Broadband: July 1, 2002 Rate Adjustment Notifications* at 73, 92.<sup>18</sup> Looking at the 2005 rate cards, Randolph’s BST rate for 2004 (the previous year) was shown as \$6.29 with an FRC of \$1.26 for a total of \$7.55, the same rate as the previous year when the FRCs had not yet been listed separately (\$7.55).<sup>19</sup> *Comcast: 2005 Price Change Information* at 85. With respect to Springfield’s rates, the 2005 rate card

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<sup>16</sup> During this proceeding, neither community proffered an explanation for its long delay in raising this issue for the first time.

<sup>17</sup> These rates were included as part of the BST rate, but were shown as a separate line item.

<sup>18</sup> Beginning in 2005, the Cable Division allowed Comcast to fully break out FRCs from the basic rate calculation and to track these rates separately on an FRC worksheet. *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, Rate Order, CTV 04-3/04-4* at 13-19. At that point, BST rates were reduced, and FRCs were charged and shown separately on the rate cards. As a result, there was no rate impact on account of removing FRCs from the basic rate calculation. Rather, the only change involved the manner in which the rates were presented to subscribers.

<sup>19</sup> As Comcast began breaking out FRCs from the BST rates in 2005, Comcast’s 2005 rate cards included both 2004 and 2005 rates in order to show the amount of embedded and incremental FRCs contained in the rate. *See generally Comcast: 2005 Price Change Information.*

reveals a basic rate of \$6.36 and FRCs of \$1.19 to yield an MPR of \$7.55. *Comcast: 2005 Price Change Information* at 110. The 2004 rate card for Springfield also showed an MPR of \$7.55. *Comcast: 2004 Price Change Information* at 113. Therefore, Comcast's treatment of FRCs is consistent with the understanding that only incremental FRCs would be passed through to subscribers.

In light of this rate analysis, the Department finds that had Randolph and Springfield truly expected rate decreases, this issue would have been brought to our attention much earlier. There is no evidence that the two communities were looking for rates to decrease or for operators to remove previously embedded FRCs from the BST rate. In fact, it appears that when the licenses were being negotiated, the franchise representatives were most concerned about any potential rate increase as a result of the new license. This conclusion is reflected in the memorandum cited by Springfield:

Notwithstanding any law or regulation to the contrary, the City and Media One would waive any rights under applicable law to pass on the cost of in-kind benefits to City cable television subscribers, *i.e., the subscribers' monthly cable television bills would not increase as a result of Media One's payment of in-kind benefits to the City.*

DTC-Springfield 1, Attachment 1(emphasis added). In addition, at the hearing in this rate proceeding, Mr. Stone, Chairman of Randolph's Cable Advisory Committee at the time of the license renewal, acknowledged that he did not anticipate a rate reduction due to FRCs being removed from the rate (Tr. at 61). The language from the memorandum cited above, the failure of the intervenors to raise this issue sooner, and the testimony from Mr. Stone together confirm that neither Randolph nor Springfield expected any rate decreases as a result of the license renewals. Rather, the evidence supports the Department's conclusion that the complaining intervenors were primarily concerned about minimizing or eliminating any potential rate

increases.<sup>20</sup> Such concerns were addressed by securing renewal licenses with Media One (now Comcast) which limited pass-throughs to increases in FRCs due to the license renewals.

i. FRC Worksheets

Having resolved the issue of the limitation of pass-throughs of FRCs in Springfield and Randolph, the Department next addresses the complaining intervenors' concerns with the specific costs listed on the FRC Worksheets. As previously discussed, the Settlement Agreement treated FRCs incurred under previous licenses as embedded in the BST rate. Thus, the Settlement Agreement requires all parties to the agreement to use these embedded costs as a benchmark, or placeholder, by which to measure any incremental FRCs to be passed through to subscribers under the new license. As Comcast testified at the rate hearing, references to prior operating costs, prior capital or prior I-NET maintenance in the FRC Worksheets were intended to indicate the amount expended in the previous license and, therefore, already included in the BST rate (Tr. at 95). These costs do not represent specific cost categories currently being expended under the renewal license. By entering these prior costs, Comcast is using each cost as a benchmark to calculate any incremental increases in FRCs that may be passed through under the new license. Thus, it is appropriate for Comcast to list these costs on the FRC Worksheets even though there is no corresponding FRC or pass-through to subscribers. The Department has reviewed the FRC Worksheets for the two communities and has determined the following:

a. Randolph

The renewal license required a \$200,000 capital grant payable by Comcast to the Town.

Randolph Brief, Exhibit A, § 3.2. On the FRC Worksheet, Comcast identified that the prior

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Historically, communities have seen a reduction in FRCs only in situations where FRCs are lower in the renewal license than in the previous license. Such a scenario typically arises where the renewal license implements a percentage of revenue franchise fee to cover PEG operating expenses rather than a FRC element for such expenses. *See supra* at 7-10 (discussion relating to Fairhaven). In both Springfield and Randolph, the total FRCs in the renewal license increased from the previous license. As a result, no reduction in FRCs could reasonably have been anticipated by Springfield or Randolph.

license included capital (prior capital) in the amount of \$117,670. Comcast separately included incremental capital in the amount of \$82,330 to arrive at the total of \$200,000. Exhibit Comcast 134. The purpose of this presentation is to identify the existing and incremental amounts so that the incremental FRCs (\$0.13) could be properly calculated and passed through to subscribers. *Id.*

Likewise, the renewal license required payment for annual operating expenses in the amount of \$125,000. Randolph Brief at 1-3 (citing § 6.4(a)). The FRC Worksheet lists prior operating costs in the amount of \$100,000 as well as an annual \$15,000 payment, which reflects the incremental increase passed through to subscribers.<sup>21</sup>

b. Springfield

The renewal license indicated that no new costs would be passed through to subscribers. Exhibit DTC-Springfield 1, Attachment 5 (Section 8.1(d)). On the FRC Worksheet, Comcast included prior operating costs (\$475,000), prior I-NET maintenance (\$70,990) and prior capital (\$533,333). These costs represent a total of \$1,079,323 or \$1.27 in FRCs per subscriber per month.<sup>22</sup> Comcast also lists other additional expenses on the FRC Worksheet, including I-Net costs (\$1,366,667), community center equipment (\$300,000), operating budget (\$300,000), and I-Net maintenance (\$41,934). These costs, however, do not represent specific cost categories currently being expended under the renewal license. Instead, they are “placeholders” used as benchmarks to calculate any incremental FRCs in the renewal license. After review of the FRC Worksheet, the Department has determined that, consistent with the renewal license, Comcast has not passed through any incremental costs associated with the renewal license.

<sup>21</sup> Although the incremental annual payment made by Comcast was \$25,000, the Company was only permitted to pass-through \$15,000 of that amount pursuant to the terms of the renewal license. Randolph Brief, Exhibit A (citing § 6.4(a)).

<sup>22</sup> The exact per-subscriber amount varies slightly year to year due to variations in subscriber totals.



c. Conclusion

The Department has reviewed the amounts being passed through to subscribers under the license agreements in both Randolph and Springfield and concludes that these amounts comply with the license terms. Although Comcast has properly accounted for its treatment of FRCs in both communities, the Department is concerned with the manner in which the information was presented in the FRC Worksheets, which can be difficult to understand. The inclusion of references to certain prior costs, such as I-NET maintenance, can be quite confusing to Local Franchising Authorities (“LFA”) as they review the rate forms. In addition, by including a monthly FRC amount next to a non-pass-through item such as the I-Net construction, the LFA can quite easily be confused into believing that these amounts are being included in the BST rate. Finally, when the total pass-through of a specific amount is limited, such as the \$25,000 annual operating expense in Randolph which is limited to a \$15,000 pass-through, it is important for Comcast to precisely indicate what the amount represents and how a certain portion has been excluded for FRC pass-through purposes. The Department encourages Comcast to adopt these presentation changes, which will lead to a more easily understood FRC Worksheet and will likely eliminate any possible confusion in the future that is related more to the presentation of the figures rather than to the calculations themselves.

5. Channel Migration From Analog to Digital Platform

On July 15, 2008, for a large number of communities, Comcast moved the Comcast Network (“CN8”) and/or New England Cable News (“NECN”), both BST channels, from the analog to a digital platform. (Tr. at 14-20). While these two channels remain part of the BST, basic service customers will need either a television equipped with a digital tuner or a digital converter box to receive these signals. *See Exhibit DTC-Comcast-RR-1* (stating “[o]ther customers will need to obtain a converter from Comcast or a third party in order to see the digital

channels”). Comcast asserts that “[t]his development is entirely consistent with past industry and regulatory practice, as some cable customers, equipped with non-cable ready television sets, have traditionally needed to lease a converter to see all of the video services included in the basic service tier.” *Id.*

The FCC recently began an inquiry on the issue of channel migration from the analog to the digital platform. Letters of Inquiry, FCC Docket Nos. DA-08-2488 through DA-08-2500 (October 30, 2008). The FCC has asked all the major cable providers to supply information relating to the manner in which each company has approached channel migration with particular attention to whether the migration will cause consumers to lose channels they previously received as part of the BST. *Id.* The Department is closely monitoring the FCC inquiry, and if the FCC subsequently finds this practice to be in violation of its rules, the Department will enforce that policy in Comcast’s next rate proceeding. However, based on our review of current federal law, we find that Comcast’s channel migration is lawful.

Section 76.630 (a) of the Code of Federal Regulation indicates that “[c]able system operators shall not scramble or otherwise encrypt signals carried on the basic service tier.” 47 C.F.R. § 76.630 (a). Accordingly, cable operators are obligated to provide an unscrambled basic tier. Comcast, in this case, is complying with that directive. *See* Exhibit DTC-Comcast-RR-1. When cable regulation began in 1993, a number of subscribers had what were considered “older” television sets. These sets could not receive cable channels above 13 and required cable boxes to act as tuners in order for the subscriber to see all the basic tier channels. Absent this tuner, subscribers would only have received the channels on the low end of the channel line-up but nevertheless would have been required to pay the entire monthly basic tier charge. Today, standard analog cable-ready television sets fall into the category of “older” television sets. With the advent of digital television and its inherent advantages such as more efficient use of channel

bandwidth and better picture clarity, operators are increasingly migrating channels to the digital platform.<sup>23</sup> In order to receive channels in digital format, subscribers will need digital cable-ready television sets or digital converter boxes, much like older analog sets needed cable boxes in order to get higher numbered channels (i.e., higher than channel 13).

As Comcast migrates channels from analog to digital platforms, it is important to note that, unlike the competitive providers, all over-the-air channels are still provided in an analog format requiring no extra equipment to receive these signals.<sup>24</sup> In addition, Comcast is not scrambling any of these signals so those subscribers with cable-ready television sets will be able to receive these signals without a converter box. *See* Exhibit DTC-Comcast-RR-1.

As far as the equipment necessary to receive the digital signals is concerned, Comcast is leasing the same equipment used by subscribers to more advanced services, to BST-only subscribers for a lower rate. Current digital subscribers pay \$3.70 per month for a standard digital converter box. According to Comcast, these converter boxes are available to BST-only customers for \$1.10 per month (excluding remote control).<sup>25</sup> *See* Exhibit DTC-Comcast-RR-1.

As noted above, the Department is closely monitoring the FCC inquiry relating to channel migration. If the FCC issues any rules relating to channel migration following the issuance of this Order, the Department will enforce those rules in Comcast's next rate proceeding. Based on current federal law, we find that Comcast's channel migration is lawful.

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<sup>23</sup> In fact, the two largest competitive cable providers in the state, Verizon and RCN, have both switched to all-digital platforms and additional equipment is required for any analog television set to receive any signals. Neither of those competitive providers is subject to cable regulation and both are permitted to switch to all-digital platforms.

<sup>24</sup> Pursuant to FCC requirements, Comcast must continue to provide all over-the-air channels in an analog format for at least three years following the February 17, 2009, digital transition. *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Third Report and Order and Third Further Notice of Proposed Rule Making*, CS Docket No. 98-120, FCC 07-170, at 6-9 ¶ 15-19 (November 30, 2007).

<sup>25</sup> The monthly cost of the BST-only converter box is \$1.10 and the cost for the remote control is \$0.25. Exhibit DTC-Comcast-RR-1.

V. ORDER

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

ORDERED: That Comcast's FCC Forms 1240, as filed on November 1, 2007, and December 20, 2007 (admitted as Exhibits Comcast 1-188), for all of Comcast's original regulated communities are approved except for those communities that have been deregulated since the inception of this proceeding and except as noted below; and it is

FURTHER ORDERED: That Comcast's FCC Form 1240, as filed on November 1, 2007 and admitted as Exhibit Comcast 29, for Canton, is denied; and it is

FURTHER ORDERED: That Comcast's revised FCC Form 1240, as filed on June 9, 2008 and admitted as Exhibit DTC-Comcast 7, Exhibit 1, for Canton, is approved; and it is

FURTHER ORDERED: That Comcast file, in accordance with this Rate Order, a refund plan for Medway for its BST overcharges resulting from its collection of franchise related costs relating to the program coordinator position for the access studio, on or before December 4, 2008; and it is

FURTHER ORDERED: That Comcast's FCC Form 1205, admitted as Exhibit Comcast 189A, is approved; and it is

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

By Order of the Department

*s/ Sharon E. Gillett*

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Sharon E. Gillett, 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.

## APPENDIX

COMCAST

RATE SCHEDULE

BASIC SERVICE TIER PROGRAMMING AND REGULATED EQUIPMENT RATES