

THE COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION**

In the Matter of	)	Docket No. Y-99 INC, Y-99 EQU			
	)	Date Issued: December 22, 1999			
)				
MediaOne of	)	Agawam	Granby	Montague	Southwick
	)	Amherst	Granville	Nahant	Springfield
Massachusetts, Inc.	)	Attleboro	Greenfield	Natick	Stoneham
	)	Avon	Hamilton	Needham	Stoughton
MediaOne Enterprises,	)	Berkley	Hanover	New Bedford	Sunderland
Inc.	)	Bernardston	Hanson	Newbury	Tewksbury
	)	Beverly	Hardwick	North Andover	Topsfield
MediaOne of Brockton, Inc.	)	Billerica	Hatfield	Northampton	Truro
	)	Boxford	Hingham	Northfield	Ware
MediaOne of Milton, Inc.	)	Brockton	Holbrook	Norwell	Wareham
	)	Buckland	Holyoke	Orleans	Warren
MediaOne of Needham,	)	Burlington	Hopkinton	Palmer	Watertown
Inc.	)	Cambridge	Hull	Pelham	Wayland
	)	Chelmsford	Huntington	Phillipston	Wellesley
MediaOne of Pioneer	)	Chester	Ipswich	Provincetown	Wellfleet
Valley, Inc.	)	Clinton	Lakeville	Quincy	Wenham
	)	Cohasset	Lancaster	Randolph	West Bridgewater
MediaOne of Southern	)	Conway	Lawrence	Raynham	West Newbury
New England, Inc.	)	Dartmouth	Longmeadow	Reading	West Springfield
	)	Dedham	Lowell	Rehoboth	Westfield
MediaOne of Western	)	Deerfield	Marblehead	Revere	Westhampton
New England, Inc.	)	Dighton	Marion	Rochester	Weston
	)	East Bridgewater	Marlborough	Rowley	Weymouth
For a Determination of	)	Eastham	Mattapoissett	Saugus	Whitman
Cable Television Rates	)	Easton	Methuen	Scituate	Williamsburg
	)	Erving	Middleborough	Shelburne	Wilmington
)	Fall River	Milford	Sherborn	Winchendon
)	Freetown	Milton	South Hadley	Winchester
)	Gill	Monson		

RATE ORDER

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I. INTRODUCTION

MediaOne of Delaware, Inc. (“MediaOne” or “the Company”), through its subsidiaries,¹ has filed proposed basic service tier programming rates on Federal Communications Commission (“FCC”) Form 1210² for all of the above-captioned communities, as well as for the Town of Arlington and the City of Newton, which are no longer subject to rate regulation.³ MediaOne has also filed proposed equipment

¹ MediaOne operates its Massachusetts franchises through subsidiary companies. The licenses of the above-captioned communities are held by the following legal entities:
MediaOne of Massachusetts, Inc.: Attleboro, Avon, Berkley, Beverly, Billerica, Boxford, Burlington, Cambridge, Clinton, Cohasset, Dedham, Dighton, East Bridgewater, Eastham, Easton, Freetown, Hamilton, Hanover, Hanson, Hingham, Holbrook, Hopkinton, Hull, Ipswich, Lakeville, Lancaster, Lawrence, Marblehead, Marion, Marlborough, Mattapoisett, Methuen, Middleborough, Milford, Nahant, Natick, Newbury, North Andover, Norwell, Orleans, Phillipston, Provincetown, Quincy, Randolph, Raynham, Reading, Rehoboth, Revere, Rochester, Rowley, Saugus, Scituate, Sherborn, Stoneham, Stoughton, Topsfield, Truro, Wareham, Watertown, Wayland, Wellesley, Wellfleet, Wenham, West Bridgewater, West Newbury, Weston, Whitman, Wilmington, Winchendon and Winchester;
MediaOne of Pioneer Valley, Inc.: Amherst, Buckland, Erving, Gill, Greenfield, Hardwick, Monson, Montague, Palmer, Pelham, Shelburne, Ware and Warren;
MediaOne of Southern New England, Inc.: Chelmsford, Dartmouth, Fall River, Lowell, New Bedford, and Tewksbury;
MediaOne of Western New England, Inc.: Agawam, Bernardston, Chester, Conway, Deerfield, Granby, Granville, Hatfield, Holland, Holyoke, Huntington, Longmeadow, Northampton, Northfield, South Hadley, Southwick, Springfield, Sunderland, West Springfield, Westfield, Westhampton and Williamsburg.
MediaOne of Brockton, Inc.: Brockton.
MediaOne of Milton, Inc.: Milton.
MediaOne of Needham, Inc.: Needham.
MediaOne Enterprises, Inc.: Weymouth.

² The FCC Form 1210 allows a cable operator to update its basic service tier programming rates on a quarterly basis to account for inflation, changes in external costs, and changes in the number of regulated channels. FCC Form 1210s were filed on November 27, 1998 for all of the above-captioned communities, except the following: FCC Form 1210s were filed on January 21, 1999 for Attleboro and Rehoboth; on April 20, 1999 for Chelmsford, Dartmouth, Fall River, Lowell, New Bedford and Tewksbury; on May 17, 1999 for Amherst, Buckland, Erving, Gill, Greenfield, Hardwick, Monson, Montague, Palmer, Pelham, Shelburne, Ware and Warren; and on August 25, 1999 for Brockton, Holbrook and Whitman.

³ On August 19, 1999, the FCC ruled that MediaOne is subject to effective competition in the Town of Arlington and the City of Newton. MediaOne of Massachusetts: Petition for Determination of Effective Competition, Arlington MA and Newton MA, CSR 5395-E (released August 24, 1999). Accordingly, cable rates in Arlington and Newton are no longer regulated by the Cable Division, and we have not reviewed the FCC Form 1210s MediaOne filed for these communities.

rates on FCC Form 1205 for the City of Attleboro and the Town of Rehoboth.⁴ Pursuant to federal rate regulations, MediaOne has put all of the proposed rates into effect, subject to review and refund.⁵ 47 C.F.R. § 76.933(c).

The Cable Division held a public hearing on the pending filings in Boston on October 27, 1999. The Towns of Marion, Natick, Ware and Wayland intervened in this proceeding. The evidentiary record consists of 114 MediaOne exhibits covering the Company's rate filings for the above-captioned communities, four Cable Division exhibits consisting of MediaOne's responses to our information requests, and two responses to record requests posed by the Cable Division. No briefs were filed by any party.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

The standard under which the Cable Division must review rate adjustments on FCC rate forms is found in the FCC's rate regulations. Specifically, the regulations provide that the rate regulator shall assure that the rates comply with the requirements of 47 U.S.C. § 543 of the Cable Television Consumer and Competition Act of 1992 as amended (the "Cable Act"). 47 C.F.R. § 76.922(a). The Cable Division may accept as in compliance with the statute basic service tier rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by 47 C.F.R. § 76.922(c), and may also accept equipment and installation charges that are calculated in accordance with 47 C.F.R. § 76.923. In addition, the Cable Division shall only approve rates it deems reasonable under federal law. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates comply with the federal regulations, the burden of proof is on the cable operator to demonstrate that its proposed rates for the

⁴ The FCC Form 1205 allows a cable operator to annually adjust its costs of regulated cable equipment and installations. MediaOne filed its combined FCC Form 1205 for Attleboro and Rehoboth on January 21, 1999. Pursuant to the Social Contract between MediaOne and the FCC, Social Contract for Continental Cablevision, Inc., FCC 95-355 (effective date August 1, 1995) at 15-16, the equipment and installation rates for all the other above-captioned MediaOne communities are regulated by the FCC, not the Cable Division.

⁵ MediaOne's proposed programming rates were put into effect in all of the above-captioned communities on January 1, 1999, except for Chelmsford, Dartmouth, Fall River, Lowell, New Bedford and Tewksbury, where the proposed programming rates became effective on June 1, 1999; in Amherst, Attleboro, Buckland, Erving, Gill, Greenfield, Hardwick, Monson, Montague, Palmer, Pelham, Rehoboth, Shelburne, Ware and Warren, where the proposed programming rates became effective on July 1, 1999; and in Brockton, Holbrook and Whitman, where the proposed rates became effective on October 1, 1999. MediaOne's proposed FCC Form 1205 rates for equipment and installations for Attleboro and Rehoboth became effective on July 1, 1999.

basic service tier and accompanying equipment comply with 47 U.S.C. § 543 and implementing regulations. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (released May 3, 1993) ¶ 129; see also 47 C.F.R. § 76.937(a). Adjustments on FCC Form 1210 for inflation and changes in external costs must satisfy the requirements of 47 C.F.R. § 76.922(d)(2) and (3). With respect to equipment and installation costs on FCC Form 1205, subscriber charges shall not exceed charges based on actual costs as determined in accordance with regulatory requirements. 47 C.F.R. § 76.923(a)(2). Accordingly, the Cable Division must determine that upon a showing by MediaOne, the rates are in compliance with the Cable Act and 47 C.F.R. §§ 76.922 and 76.923.

III. DISCUSSION AND ANALYSIS

Generally, the Cable Division finds that MediaOne's FCC Form 1210s and FCC Form 1205 comply with the applicable federal law. However, for some communities, MediaOne's FCC Form 1210s reflect an adjustment for external costs that is inconsistent with applicable federal law. More specifically, we address MediaOne's ratemaking treatment of costs for public, governmental and educational access, generally called franchise related costs ("FRCs"), in communities whose licenses have recently been renewed. The communities at issue in this proceeding are listed on the Company's response to the Cable Division's Record Request 1. They are: Brockton, Burlington, Clinton, Eastham, Granby, Hanson, Holbrook, Holyoke, Ipswich, Lancaster, Lawrence, Longmeadow, Marion, Marlborough, Mattapoisett, Milton, Natick, North Andover, Northampton, Provincetown, Quincy, Randolph, Revere, Rowley, Saugus, Scituate, Southwick, Stoneham, Stoughton, Wareham, West Newbury, Weston, Whitman, Williamsburg and Wilmington.

For many "Classic MediaOne"⁶ communities whose initial licenses have not yet been renewed, MediaOne establishes FRCs for ratemaking purposes by aggregating communities into several groups and then calculating an average FRC figure applicable to all the communities within the aggregation. MediaOne of Massachusetts, Inc., et al., Y-97 INC, Agawam et al. (issued December 23, 1998) at 4-7. Then, at the time each community's license is renewed, MediaOne determines the actual pre-renewal FRCs, which, as the Company acknowledged, is not always a simple process (Exh. CATV-3). MediaOne then computes the difference between the actual pre-renewal FRCs and the post-renewal FRCs negotiated as part of the license renewal (hereafter the "FRC change") (id.).

⁶ "Classic MediaOne" is the Company's term for those communities who, in 1994, had granted a cable franchise to MediaOne, then Continental Cablevision, before the Company acquired a number of franchises from other cable operators.

In this proceeding, the specific issue is how MediaOne reports the pre-renewal and post-renewal FRCs on the FCC Form 1210 of a community whose license has been renewed since the last rate filing. Specifically, the Company's practice is to report the aggregated average pre-renewal FRCs from a designated community group on Line C14, "Previous External Costs." MediaOne reports a post-renewal FRC figure derived by adding together the pre-renewal aggregate average and the FRC change on Module D, "Calculation of Current External Costs per Subscriber," at Line D6, "Franchise Related Costs" (Exh. CATV-3; RR-CATV-1). MediaOne does not report the community's actual pre-renewal FRCs on Line C14, nor does it report the community's actual post-renewal FRCs on Line D6 (id.).

The Cable Division questioned this very method in MediaOne, Y-97 INC, ordering MediaOne to use actual franchise-specific FRC amounts for ratemaking purposes for both pre-renewal and post-renewal FRCs:

Generally, ratemaking and licensing issues may arise if succeeding FCC rate forms do not reflect actual post-renewal FRC amounts, but instead show the pre-renewal average FRCs plus the FRC adjustment resulting from renewal. For example, there exists the possibility that the post-renewal FRCs based on averages reported on future FCC rate forms could be mistaken for the *actual* FRC numbers, with consequences for rate adjustments and negotiations with communities. Because there are a large number of MediaOne franchises due for renewal over the next few years, this problem will only become more pronounced.

MediaOne has stated that either actual or estimated pre-renewal FRCs for renewed communities are available. ... Therefore, in those communities whose licenses have now been renewed ... the Cable Division determines that MediaOne should use a franchise-specific FRC amount, for *both* pre-renewal and post-renewal FRCs, to ensure the accuracy of the computation of basic tier rates on these communities' FCC Form 1210s. Accordingly, the Cable Division directs that MediaOne make adjustments consistent with this Rate Order for all affected franchises in its 1999 FCC Form 1210 filings.

Id. at 6-7 (Emphasis in original).

The Cable Division issued the 1998 Rate Order after MediaOne filed its 1999 FCC Form 1210s currently under review. Consequently, MediaOne was not able to

implement the necessary changes in its pending filings.⁷ The Company stated that it “will recalculate its 1999 Form 1210s for renewal franchises using the actual ‘old’ FRCs instead of ‘average’ FRCs in arriving at the entries for Lines C14 and D6” (Exh. CATV-3). MediaOne also stated that its 2000 FCC Form 1210 filings for franchises with renewed licenses will no longer incorporate the average FRCs into Lines C14 and D6. Instead, Lines C14 and D6 will reflect the actual FRCs under the old and new licenses respectively (*id.*).

The Cable Division has reviewed the rate filings and supporting documentation provided by MediaOne to date. We find that no rate adjustments are necessary for those communities whose licenses have not been recently renewed. However, consistent with our previous order, the Cable Division directs MediaOne to refile its 1999 FCC Form 1210s for its recently renewed franchises using actual FRCs instead of average FRCs.

IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, MediaOne’s FCC Form 1210s as filed on November 27, 1998 for Agawam, Avon, Berkley, Bernardston, Beverly, Billerica, Boxford, Cambridge, Chester, Cohasset, Conway, Dedham, Deerfield, Dighton, East Bridgewater, Easton, Freetown, Granville, Hamilton, Hanover, Hatfield, Hingham, Holland, Hopkinton, Hull, Huntington, Lakeville, Marblehead, Methuen, Middleborough, Milford, Nahant, Needham, Newbury, Northfield, Norwell, Orleans, Phillipston, Raynham, Reading, Rochester, Sherborn, South Hadley, Springfield, Sunderland, Topsfield, Truro, Watertown, Wayland, Wellesley, Wellfleet, Wenham, West Bridgewater, West Springfield, Westfield, Westhampton, Weymouth, Winchendon and Winchester; as filed on January 21, 1999 for Attleboro and Rehoboth; as filed on April 20, 1999 for Chelmsford, Dartmouth, Fall River, Lowell, New Bedford and Tewksbury; and as filed on May 17, 1999 for Amherst, Buckland, Erving, Gill, Greenfield, Hardwick, Monson, Montague, Palmer, Pelham, Shelburne, Ware and Warren.

The Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, MediaOne’s FCC Form 1205 as filed on January 21, 1999 for Attleboro and Rehoboth.

The Cable Division hereby directs MediaOne to file its 1999 FCC Form 1210s using actual FRCs instead of average FRCs on or before Tuesday, December 28, 1999, for the communities of Brockton, Burlington, Clinton, Eastham, Granby, Hanson,

⁷ The current FCC Form 1210s for all but three of the Classic MediaOne communities were filed on November 27, 1998; the 1998 MediaOne Rate Order was issued on December 23, 1998.

Holbrook, Holyoke, Ipswich, Lancaster, Lawrence, Longmeadow, Marion, Marlborough, Mattapoisett, Milton, Natick, North Andover, Northampton, Provincetown, Quincy, Randolph, Revere, Rowley, Saugus, Scituate, Southwick, Stoneham, Stoughton, Wareham, West Newbury, Weston, Whitman, Williamsburg and Wilmington.

The attached schedule provides the current and permitted basic service tier programming and equipment rates for each community approved herein.

**By Order of the
Department of Telecommunications and Energy
Cable Television Division**

s/ Alicia C. Matthews
Alicia C. Matthews
Director

APPEALS

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 1997, c. 164, § 273. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within seven days of the filing of the initial petition for appeal.