

COMMONWEALTH OF MASSACHUSETTS
Department of Telecommunications and Energy
Cable Television Division

In re:)
Revision of Financial Reporting Forms)

February 8, 2001

ORDER
ADOPTING REVISED
ANNUAL FINANCIAL AND STATISTICAL DATA FORMS

I. INTRODUCTION

Pursuant to G.L. c. 166A, ' 8, cable operators are required to file annually with the Department of Telecommunications and Energy-s Cable Television Division (ACable Division@) a statement of revenues and expenses, a financial balance sheet, and a statement of ownership. Cable operators are to make these filings on forms prescribed by the Cable Division. G.L. c. 166A, ' 8. In compliance with state law, the Cable Division had prescribed the following forms: Form 200 B Financial Balance Sheet, Form 300 B Statement of Revenues and Expenses, and Form 400 B Statement of Funds Flow (together the AFinancial Forms@). The Cable Division had not prescribed a specific form for the statement of ownership.

Forms 200, 300 and 400, together with a Uniform Reporting System that instructed cable operators how to complete the forms, were previously incorporated into the Cable Division-s regulations at 207 C.M.R. ' 7.02. Consistent with the Secretary of State-s policy,¹ the Cable Division removed the Financial Forms and the Uniform Reporting System from our regulations in 1996. Report and Order, R-25, at 25 (1996). This change allowed the Cable Division greater flexibility in making revisions to the Financial Forms and the Uniform Reporting System because we need not invoke the formal rulemaking process.

¹ The Office of the Secretary of the Commonwealth State Publications and Regulations Manual, October 1995 Edition, states, at page 6: A[f]orms by their nature are not regulations and should not be part of a regulation.@ The applicable administrative regulations, at 950 C.M.R. ' 20.03(6), provide that A[r]egulations shall be in conformance with the Secretary-s policies as stated in the Regulations Manual.@

Upon review of the Financial Forms and the Uniform Reporting System, the Cable Division determined that modifications were warranted. On July 18, 2000, we issued an Order Requesting Comments on Proposed Annual Financial and Statistical Data Forms (the Order Requesting Comments). Comments were filed by the following interested persons: the law firm of Epstein & August, LLP, representing themselves, the Towns of Brookline and Canton, the City of North Adams, and the Boston Community Programming and Access Foundation, Inc. (Epstein & August); MediaOne of New England, Inc., now offering services as AT&T Broadband (AT&T Broadband); and the New England Cable Television Association (NECTA).

II. ANALYSIS AND FINDINGS

A. Aggregated Data

The Cable Division's current Uniform Reporting System defines a reporting entity as a cable system. Uniform Reporting System (December 1993) at 2, Reporting Entity. Under the current standard, cable operators, as reporting entities, are required to report their financial data either on the level of an individual community's license, or on an aggregate basis if physically contiguous licenses are under common ownership (*id.*). The statute, G.L. c. 166A, ' 8, contains no reference to the organizational level at which cable operators must file the Financial Forms. The Cable Division began accepting cable operators' financial filings aggregated for single cable systems serving neighboring but not contiguous communities.

The Cable Division sought to formalize the current practice and thus proposed a reporting standard that would give cable operators the option of providing their financial data on a franchise, system, legal entity or statewide basis. Order Requesting Comments at 4. The Financial Forms would not include data from states other than Massachusetts. Our proposal also eliminated the requirement of franchise contiguity.

Epstein & August expressed reservations concerning the Cable Division's proposal, arguing that the changes would reduce the availability of community-specific information and thereby negatively affect local oversight (Epstein & August Comments at 1). Specifically, Epstein & August observed that cable operators make payments to communities based on local gross revenues for a variety of public, educational and governmental access purposes (*id.*). For instance, Brookline, Canton and North Adams have licenses providing for the payment of access funds calculated as a percentage of gross annual revenues (*id.*). Epstein & August observed that longstanding Cable Division precedent allows local issuing authorities to require community-specific gross revenue information pursuant to local license terms (*id.*). They noted that the Cable Division's proposed revisions make no reference to continuing this precedent and may have the

unintended effect of negating it (id.)

AT&T Broadband supported the Cable Division's proposal on aggregated data. AT&T Broadband observed that in the past, when cable operators operated on a franchise or system basis, it was reasonable to require them to present financial data on a comparable basis (AT&T Broadband Comments at 1). However, most cable systems in the Commonwealth are now owned and operated by well-established multiple system operators (id.). AT&T Broadband observed that the Cable Division's current instructions would require the disaggregation of financial data down to a corporate entity or even franchise level, often based on subscriber allocations (id. at 2). AT&T Broadband argued that such disaggregations and allocations would be time consuming, and more importantly, would not provide the Cable Division with information in the most useful and efficient format (id.). AT&T Broadband endorsed the Cable Division's proposal that cable operators be permitted to report data at a statewide level (id.). AT&T Broadband would no longer have to prepare separate Financial Forms for each of its nine legal entities in Massachusetts; thus the total number of forms it would file would be reduced from 27 to three (id.).

As stated above, the Financial Forms are mandated by statute, G.L. c. 166A, ' 8. When Section 8 was originally enacted in 1971, it provided that the licensee shall file with the commission and the issuing authority ... an audited and sworn statement of its revenues and expenses ... for official use only.@ Stat. 1971, c.1103, ' 8. However, in 1979, Section 8 was amended to specifically remove the requirement that the statement of revenues and expenses be filed with issuing authorities. Stat. 1979, c. 249, ' 2. Under Section 8, as amended, only two forms are to be supplied to both the Cable Division and local issuing authorities: Aa financial balance sheet and a statement of ownership which shall be open to public inspection.@ Id. Therefore, issuing authorities have no statutory authorization under the statute to receive the statement of revenues and expenses, although cable operators may submit it pursuant to cable license provisions, or may provide it voluntarily. Nevertheless, the Cable Division observes that issuing authorities obtain their authority to issue cable licenses and to require cable operators to provide community-specific financial data from state and federal statutory provisions unrelated to Section 8, notably G.L. c. 166A, ' ' 4, 5 and 6, and 47 U.S.C. ' ' 541, 542, 545 and 546. For example, cable operators must provide community-specific financial information to local issuing authorities where the cable licenses require operators to make access payments that are a percentage of local gross annual revenues. The Cable Division concludes that the proposed changes to its Financial Forms have no effect upon the financial information that local issuing authorities may require cable operators to provide.

Moreover, our proposal to allow aggregate data reporting would not significantly reduce the amount of community-specific information being provided. The Cable

Division's review of the Form 200s that cable operators filed for the calendar year 1999 shows that cable operators have been filing their financial forms either on a legal entity basis² or on a system basis. Adelphia filed nine Form 200s on a legal entity basis. Only two of these legal entities served single communities: Falmouth and Marshfield. Cablevision filed three Form 200s on a legal entity basis; one each for Boston and Brookline, and the third for its other 37 Massachusetts franchises. Charter filed four Form 200s on a system basis; one for its original Massachusetts system, two for its former Greater Media systems, and one for the former Avalon system. Cox filed a Form 200 for Holland, its only Massachusetts community. AT&T Broadband (then MediaOne) filed nine Form 200s on a legal entity basis for its 175 Massachusetts franchises. Three of these legal entities served single communities: Brockton, Milton and Needham. On the other hand, another AT&T Broadband legal entity served 89 communities. RCN filed one combined Form 200 for all of its Massachusetts communities. Time Warner filed two Form 200s on a system basis; one for its Pittsfield system, and the other for its Athol/Orange system. Individual Form 200s were also filed for the municipal systems in Russell and Shrewsbury. Thus, when the Financial Forms were filed in early 2000, only 10 communities received individual Form 200s pursuant to Section 8. For the overwhelming majority of the 309 Massachusetts cities and towns with cable television service, cable operators do not provide community-specific Financial Forms to either the Cable Division or the local issuing authority unless required to do so under the franchise agreement. Accordingly, the local communities' oversight of cable operators' operations will not be diminished by our proposal.

Although the Financial Forms and the Uniform Reporting System are no longer contained in the Code of Massachusetts Regulations, we are mindful of the general rule, embodied in Executive Order 384, that the costs of any regulatory requirement must not exceed the benefits that would be effected by the requirement. See Executive Order 384 at 3(b). The Cable Division has considered the burden on cable operators of the current reporting requirements, against the benefits of the additional financial information that would be provided by requiring separate or community-specific filings. Under our proposal, for instance, AT&T Broadband's filings would be reduced from nine versions of each Financial Form to only one, if the company so chose. A similar reduction also could occur for other cable operators. While a single statewide filing would eliminate the information that the Cable Division would receive about a cable operator's regional operations in Massachusetts, we would now receive financial data concerning the cable

² By Alegal entity@ is meant the corporation or partnership that legally owns the community's cable license.

operator's total operations within Massachusetts on a single Financial Form. This would be more practical for the Cable Division because our interest is in the financial condition of the cable operator's statewide Massachusetts operations. At the same time, each local issuing authority would continue to receive actual financial information concerning the cable operator's operations within its community, if required by its cable license. We conclude that our proposed use of aggregate data will reduce the costs to cable operators and ultimately to subscribers, without significantly reducing the benefits from the financial information received.

The Cable Division concludes that the use of aggregate data, as proposed in the Order Requesting Comments, satisfies the statutory requirement, while not imposing an undue burden on cable operators or cable subscribers. Accordingly, the Cable Division adopts the provision in the revised Uniform Reporting System, at page 2, that defines AReporting Entity@ as A[t]he organizational level selected by the company for the reporting of information.@

B. The Revised Form 200: Balance Sheet

The Cable Division's proposed Form 200 includes broader asset categories than those shown on the current form. For example, four individual operating asset items; ATower and Antenna,@ AElectronic Equipment,@ AProgram Origination Equipment@ and AOther,@ have been eliminated and replaced by a single combined category, AHeadend Equipment.@ Epstein & August opposed combining the asset category AProgram Origination Equipment@ with the broader AHeadend Equipment@ asset category (Epstein & August Comments at 1). They stated that one category of asset information that local officials are most interested in is information on local program origination equipment (id.). They argued that our proposal works against the objective of disclosing information on an asset category of interest to municipal officials (id.). Meanwhile, AT&T Broadband supported the Cable Division's proposal to revise the Form 200 (AT&T Broadband Comments at 2). AT&T Broadband observed that although the revised form looks much like the current version, the Cable Division's proposal to incorporate somewhat broader asset categories is more consistent with AT&T Broadband's own internal record keeping procedures and should require less work than the current forms (id.).

The Cable Division observes that retaining detailed categories, of which AProgram Origination Equipment@ is an example, will not provide municipal officials with the community-specific information they seek. As we observed above, cable operators are currently filing Form 200 on an aggregate basis; and community-specific Form 200s are currently being filed for only 10 communities. The Cable Division is sensitive to the historical and continuing need of municipal officials and access corporations to obtain

information on program origination equipment. However, local issuing authorities may more appropriately obtain information from cable operators on program origination equipment either through license provisions that require operators to provide this information, or through less formal arrangements with operators. The Cable Division therefore concludes, after due consideration, that the revised Form 200 satisfies the statutory requirement and provides us with the necessary financial information, while not imposing an undue burden on cable operators or cable subscribers, and we adopt the revised Form 200 (Attachment C), as proposed.

C. The Revised Form 300: Statement of Revenues and Expenses

The Cable Division's proposed Form 300 is separated into two parts. Proposed Part A is the Income Statement that corresponds to the current Form 300. We proposed reconfiguring the Income Statement's reporting categories to more accurately reflect both how cable operators currently provide services and the manner in which their expense records are kept. Additionally, we proposed modifying the Income Statement to reflect the expanding number of programming services currently offered by cable operators.

The Cable Division also proposed a new gross receipts statement as Part B of the Form 300. Part B would require each cable operator to provide a single gross revenue figure covering all Massachusetts franchises owned by the operator as of the end of the calendar year, regardless of the reporting level used to complete other sections of the forms. A separate page would require each cable operator to break down its gross receipts by system, to ensure that all of its Massachusetts operations have been included in the total figure.

While AT&T Broadband supported the Cable Division's proposal to revise the Form 300, Epstein & August suggested that the statement of revenues and expenses should include home shopping revenues payable to the cable operator (Epstein & August Comments at 2). In support, Epstein & August stated that many cable licenses define gross annual revenues to include home shopping revenues (id.). They also proposed that the line item for "Other Subscriber Revenues" (Form 300, Part A, Line 670) be accompanied by an explanatory note categorizing the sources of revenues (id.). Furthermore, Epstein & August proposed that gross revenues on the income statement should include that portion of subscribers' revenue attributable to license and access fees, and asserted that Federal Communications Commission (FCC) precedent calls for the calculation of gross revenues based on the inclusion of license or access fees (id. at 2).

The Cable Division finds that accounting for all revenues, including those from home shopping, as part of "Other Income and Revenue" is appropriate. This treatment will assure a more accurate revenue picture to be used by the Cable Division in

determining the gross revenue figure on which to base the annual assessment. The Cable Division emphasizes that while these revenues should be included on the form, there is no need to separately account for them on the Form 300. The Form 300 is a proprietary form that may be prepared on a statewide, region wide or system wide basis. The Form 300 is not generally available to municipalities. The treatment of a cable operator's home shopping revenues at the local level is addressed more appropriately through negotiations between the issuing authority and the cable operator. In this way, the lack of a detailed category, such as home shopping revenues, on the Form 300 does not limit the financial information that a local issuing authority may require its cable operator to provide. We conclude that requiring cable operators to submit a breakdown of another subscriber revenues would not provide significant new or beneficial information to the Cable Division, and thus would be unduly burdensome to cable operators.

With respect to the inclusion within gross revenues of the revenue attributable to license and access fees, we note that this issue was settled by the United States Court of Appeals for the Fifth Circuit in Dallas v. FCC, 118 F.3d 393 (1997). The Fifth Circuit determined that such fees are included within the statutory definition of gross revenues. Cable operators therefore must compute their license and access fees by including within their gross revenues the money collected from subscribers that will be used to pay these fees.

The Cable Division therefore concludes, after due consideration, that the revised Form 300 satisfies the statutory requirement, while not imposing an undue burden on cable operators or cable subscribers, and we adopt the revised Form 300 (Attachment D), as proposed.

D. The Revised Form 400: Statement of Ownership

The current Form 400 is a statement of funds flow not required by statute, and we proposed to eliminate it. We proposed to adopt instead a new one-page Form 400, which would satisfy the statement of ownership required by G.L. c. 166A, § 8. Cable operators would be required on the proposed Form 400 to provide the following information for each community:

1. The name of the legal entity holding the license, and, if applicable, the d/b/a or generally used name of the entity within the community;
2. The name of the ultimate parent entity;
3. The name, address, telephone number and title of the company contact person for:

- (a) The regional office or offices managing the cable licenses in Massachusetts;
- (b) The corporate office of the ultimate parent entity.

A cable operator would file the Form 400 on an aggregate basis, in those cases where the cable operator serves a number of communities through the same legal entity and from the same regional office.

Only AT&T Broadband commented on this proposal. AT&T Broadband agreed with the Cable Division's proposal to eliminate the current Form 400 (AT&T Broadband Comments at 2). AT&T Broadband agreed that the revised Form 400 is appropriate to satisfy the statement of ownership required by G. L. c. 166A, ' __ (id.)_

The Cable Division concludes that it is appropriate to replace the current Form 400 with a new Form 400 that would be an actual statement of ownership. The Cable Division therefore concludes, after due consideration, that the proposed Form 400 satisfies the statutory requirement, and we adopt the new Form 400 (Attachment E), as proposed.

E. Other Proposed Changes

The Cable Division proposed a general information page along with the Financial Forms. The general information page would require each publicly traded cable operator to provide annually to the Cable Division a copy of the Form 10-K it filed with the Securities and Exchange Commission and its current annual report to shareholders. Each privately held cable operator would be required to annually provide an audited set of financial statements. No comments were received on the general information page. Our proposal that each cable operator provide its most recent Form 10-K filing and its current annual report, or, if privately held, a set of audited financial statements, will provide us with company-wide financial information important for our general oversight of the cable television industry in Massachusetts. The Cable Division therefore adopts the new page entitled General Information Regarding the Annual Financial and Statistical Data Forms (Attachment A), as proposed.

The Cable Division also proposed a streamlined Uniform Reporting System that would contain item numbers and instructions compatible with the new Form 200 and Form 300, Part A. The Financial Forms cannot be properly completed without the Uniform Reporting System. The Cable Division therefore adopts the revised Uniform Reporting System (Attachment B), as proposed.

As required by Section 8, the Cable Division noted that the new forms would require that all financial data be provided under the pains and penalties of perjury. The Cable Division therefore proposed a new certification page. Additional information, such as the total number of the company-s Massachusetts franchises and subscribers at the end of the previous year, is also required on the proposed certification page. As this will provide useful information to the Cable Division about the size and ownership of Massachusetts cable providers, the Cable Division therefore concludes, after due consideration, that the new certification page satisfies the statutory requirement and provides the Cable Division with useful information, and we adopt the new Certification Page (Attachment F), as proposed, with its title changed to ACertification Page.@

III. ORDER

Accordingly, after due notice, it is hereby

ORDERED: That the Cable Division's proposed Annual and Statistical Data Forms are hereby adopted, effective February 8, 2001; and it is

FURTHER ORDERED: That all cable operators must file the revised Annual and Statistical Data Forms with the Cable Division on or before April 30, 2001 and on or before April 30 of each year thereafter.

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

Alicia C. Matthews
Director