

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY
Cable Television Division**

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| Investigation by the Cable Television |) | Docket No. CTV 03-3 |
| Division of the Department of |) | |
| Telecommunications and Energy |) | |
| on its Own Motion |) | Date Issued: August 11, 2003 |
| to Review the Form 100 |) | |

**ORDER OPENING A NOTICE OF INQUIRY TO REVIEW
THE FORM 100, THE LICENSE APPLICATION**

I. INTRODUCTION

The Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy seeks comments regarding whether the Form 100, the license application, in its current form, continues to meet the needs of municipalities and cable operators as they fulfill their responsibilities under the licensing process. In Massachusetts, an Issuing Authority may not issue an initial or renewal license “except upon written application” from the cable operator. G.L. c. 166A, §§ 4, 13; 207 C.M.R. § 2.03(1). The Cable Division, as authorized by Massachusetts law and regulation, has prescribed the Form 100 as the written application.¹ Id. Massachusetts law sets forth broad categories of information, as well as certain specific information, that an applicant for a license must provide to an Issuing

¹ The Form 100 is available in Adobe Acrobat format at the Cable Division’s website at <http://www.state.ma.us/dpu/catv/forms.htm>. Electronic versions of the Form 100 in Word Perfect and Microsoft Word are also available upon request from the Cable Division at 617-305-3580 or toll-free at 1-888-622-2588, or by emailing cable.inquiry@state.ma.us. If you do not have access to the Internet, please contact the Cable Division for a paper version.

Authority. G.L. c. 166A, §§ 4, 13. The Cable Division in developing the Form 100 sought to balance an Issuing Authority's need for information with the regulatory burden on the cable operator seeking a license in a particular community. As the prescribing authority, the Cable Division now reviews the Form 100 to ensure that the appropriate balance is maintained.

II. DISCUSSION

The Form 100 has been in its current form since the Cable Division removed it from the Code of Massachusetts Regulations in 1996.² Since that time, there has been an evolution of the cable television industry marked by rapid technological advances, system consolidation, and the emergence of competition from overbuilders and municipal operators. As a result, some of the language used throughout the Form 100 is outdated. More important, given these changes in the cable television industry, there may be information not currently required by the Form 100 that would prove beneficial to municipalities while at the same time some information currently required may no longer be relevant and thus would pose an undue burden on applicants.

The Form 100 should allow an Issuing Authority to determine whether the cable service being proposed by the cable operator will be responsive to the community's needs. Further, the Form 100 should provide the Issuing Authority with sufficient information to evaluate the qualifications of the applicant and make an informed decision regarding the proposal. At the

² Form 100, originally codified in 207 C.M.R. § 1.00 et seq., was removed from the regulations in 1996 to provide the Cable Division with the flexibility to make revisions as appropriate. Report and Order, R-25, at para. 141 (1996).

same time, the Form 100 should not impose a regulatory burden on the cable operator. In essence, the Form 100 should expedite, not impede, the initial licensing or renewal process. We question whether the Form 100, while compliant with the minimum standards of law, is continuing to serve its purpose.

The plain meaning of an application is to “apply” for a specific item or service. In this case, the application serves as a first look at the cable operator’s proposal to provide services. Therefore, the cable operator should submit the Form 100 prior to the required public hearing so that the public will have ample opportunity to review the Form 100 and provide comments at the public hearing as to whether or not the cable operator’s proposal meets the needs and interests of the community. However, it has come to the attention of the Cable Division that the Form 100 is increasingly filed as a formality during renewal negotiations rather than as a beneficial tool to be used by the municipality in evaluating a proposal and by the Issuing Authority in making its determination.

The Cable Division has recently expressed its frustration with the renewal process, noting several instances where the three-year renewal window provided by federal law is apparently insufficient to finalize negotiations of renewal licenses. At present, the Cable Division is aware of fifteen communities in the Commonwealth where a cable operator is providing service without a valid license in place, in violation of law. The problem is not resolved by a draconian order that such cable operators terminate service; rather the problem highlights the need for a broader look at the process to determine where the solution may lie. We begin by looking at the Form 100.

An additional development in the cable television industry that also highlights the need for regulatory change of the Form 100 is the emergence of overbuilders seeking initial licenses. There are obvious technical differences between an overbuilder proposing to construct a new cable system and an incumbent cable operator proposing to maintain a current service. Given these differences, it may be appropriate to provide one application for use in initial licensing and a second application for use in renewal licensing. In this way, an overbuilder could complete an application that provides the Issuing Authority with technical specifications relevant to building a cable system from the ground up, while an incumbent operator could complete an application that focuses on the technical specifications for maintaining a system in response to improved technologies. Prescribing two applications may serve the dual purpose of lightening the burden on incumbent cable operators and overbuilders and providing Issuing Authorities with information appropriate to the specific circumstances.

III. SOLICITATION OF COMMENTS

We look to all interested persons, particularly those involved in the licensing process such as Issuing Authorities, cable advisory committee members, and cable operators for comments as to how the process can be made more efficient within the confines of existing law and focusing on the Form 100. We encourage commenters to submit drafted versions of the Form 100 accompanied by a reasoned analysis of the proposed revisions. Commenters may also wish to recommend additional ways in which our licensing regulations may be amended to provide a more efficient process.

The Cable Division will accept written comments no later than 5:00 p.m. on Monday, November 10, 2003, for initial comments and Wednesday, December 10, 2003, for reply comments. Commenters should, where possible, provide both comments and reply comments in electronic format using one of the following methods: (1) by e-mail attachment to cable.inquiry@state.ma.us; or (2) on a 3.5" disk, IBM-compatible format. The text of the e-mail or the disk label must specify: (1) the docket number of the proceeding (CTV 03-3); (2) the name of the person, municipality, or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, e-mail address, if available, and telephone number of a person to contact in the event of questions about the filing. Electronic text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix), in Microsoft Word (naming the document with a ".doc" suffix), or as an Adobe Acrobat file (naming the document with a ".pdf" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel.

For persons unable to file in electronic format, comments and reply comments should be filed with Clerk, Cable Television Division, One South Station, Boston, Massachusetts, 02110. Both comments and reply comments submitted in electronic format will be posted on the Cable Division's website at www.state.ma.us/dpu/catv, and will be available for public inspection at the Cable Division's offices during business hours. Paper copies will also be made available upon request at a cost of 20 cents per page.

IV. ORDER

Accordingly, it is hereby:

ORDERED: The Cable Division opens an inquiry to determine whether the Form 100, the license application, is serving its purpose or whether revisions are appropriate.

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

/s/ Alicia C. Matthews
Alicia C. Matthews
Director