

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

Petition of Comcast Cable Communications, Inc. )  
to establish and adjust the basic service tier )  
programming, equipment, and installation rates ) **D.T.C. No. 12-2**  
for the communities in Massachusetts served by )  
Comcast Cable Communications, Inc. that are )  
currently subject to rate regulation. )

**RESPONSE TO CITY OF BOSTON'S BRIEF  
ADDRESSING CONCERNS WITH COMCAST'S FCC FORM 1205**

Comcast hereby responds to the Brief filed by the City of Boston (the "City") in the above-referenced proceeding. The City raises four substantive issues, all of which lack merit:

- The City's first two issues concern Comcast's compliance with the equipment aggregation rules established by the Federal Communications Commission ("FCC") in 1996. The City's regulatory proposals offer no discernible consumer benefit, confuse the material facts, and misstate the law.
- The City contends that Comcast's HD Technology Fee should be subjected to local rate regulation as an equipment charge. However, Comcast's HD Technology Fee is not applied to subscribers who take only basic service. Instead, the fee is applied as a service authorization charge *only* on subscribers to unregulated services. Accordingly, there is no basis for the City's assertion.
- The City improperly urges the Department to investigate the credit amount that Comcast offers its cable customers who chose to use their own equipment instead of Comcast's equipment that is included within a subscription package. The credit amount at issue is neither a matter for local rate regulation nor encompassed within the FCC Form 1205 that is the subject of this proceeding.

More fundamentally, the Department in this proceeding is examining Comcast's 2010 FCC Form 1205 (*i.e.*, the filing based on Comcast's 2010 fiscal year). The City's arguments, in contrast, are directed at Comcast's 2011 FCC Form 1205 (*i.e.*, the filing based on Comcast's 2011 fiscal year) which is not at issue here. Accordingly, the City's Brief is based upon an

erroneous factual predicate and its arguments fail.<sup>1</sup> Particularly given the late stage of the current rate review, the Department should not allow the City's fundamentally flawed filing to further delay this proceeding.

#### **I. BASIC-ONLY CONVERTERS**

The City's concern regarding Comcast's basic-only converter rate is premised on the notion that Comcast should have developed a "melded" rate for *all* converters provided to basic-only customers, rather than establishing a lower-priced option for standard definition ("SD") converters and a higher-priced option for high definition ("HD") converters.<sup>2</sup> The City fails to explain, however, how the suggested rate change would benefit basic-only customers. Comcast submits that the proposed change would, in fact, be contrary to the interests of the many basic-only customers who lease SD converters.

Calculating a melded, cost-based rate for *all* basic-only converters produces a maximum permitted rate *higher* than the rate calculated solely on SD converters (which have a relatively low net investment), and it produces a maximum permitted rate *lower* than the rate calculated solely on HD converters (which have a relatively high net investment). There is no reason for the Department to compel this particular rate change, which would benefit one group of basic-only customers (those with HD televisions) at the expense of another group of basic-only customers (those lacking HD televisions). Mandating such a change here would be especially unwarranted, as Comcast voluntarily charges its basic-only customers just \$2.25 for the use of an

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<sup>1</sup> Even if the Department were reviewing Comcast's 2011 Form 1205, which it is not, the City's challenges to that form would still lack merit as described herein.

<sup>2</sup> Br. at 2-3.

HD converter -- well below the \$6.72 maximum permitted rate calculated on the FCC Form 1205.

## II. CONVERTER BOX 2

The City suggests that Comcast should not have employed a single, melded rate for converters provided to *non-basic-only* customers by “lumping all of the SD, HD and HD/DVR boxes together.”<sup>3</sup> In this proceeding, the Department is considering Comcast’s 2010 Form 1205, which did *not* employ a melded rate for these converters,<sup>4</sup> and thus the City’s argument is inapplicable here. Moreover, even if Comcast had employed a melded rate on its 2010 Form 1205, which it did not, the melded rate would be permissible.

Section 623(a)(7) of the Communications Act grants cable operators the discretion to aggregate rates for equipment with different functionalities:

The Commission shall allow cable operators . . . to aggregate . . . their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category.<sup>5</sup>

Similarly, Section 76.923(c)(1) of the FCC regulations provides that equipment of the same type may be aggregated regardless of the levels of functionality:

Costs of customer equipment included in the Equipment Basket may be aggregated . . . into broad categories . . . . [S]uch categorization may be made, provided that each category includes only equipment of the same type, *regardless of the levels of functionality of the equipment within each such broad category.*<sup>6</sup>

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<sup>3</sup> Br. at 4.

<sup>4</sup> The 2010 FCC Form 1205 now before the Department carefully distinguishes “Converter Box Type 2” from “Converter Box Type 3.” The latter are expressly identified as “High Definition and Digital Video Recorder” converter units, and the former are expressly identified as “All Other Units Excluding HD and DVR.” See Comcast’s FCC Form 1205 at 7.

<sup>5</sup> 47 U.S.C. § 543(a)(7).

<sup>6</sup> 47 C.F.R. § 76.923(c)(1) (emphasis added).

In adopting its implementing regulations, the FCC emphasized that it wanted to take a “flexible approach” to the categorization of technology with different levels of functionality:

We will maintain a flexible approach with respect to categorization of new technology. For example, when new types of advanced boxes are designed and developed for use in cable systems, operators may broaden the “converter box” category and aggregate such new technology with other boxes that are used to receive services delivered over the cable system, notwithstanding the fact that the new equipment may perform other functions as well.<sup>7</sup>

Accordingly, even if Comcast had imposed a melded rate for Converter Box 2 in the rate form now before the Department, such a rate would be wholly consistent with the Communications Act and the FCC’s regulations.

### **III. HD TECHNOLOGY FEE**

The City mischaracterizes Comcast’s HD Technology Fee as a regulated equipment charge. That fee, however, applies *only* to subscribers of *unregulated* services; it is *not* applicable to subscribers who take only basic service. If basic-only customers are interested in receiving HD versions of basic service channels, they can either rely on their own HD equipment,<sup>8</sup> or they can pay a regulated rate for Comcast’s “HD Digital Converter.” They face no additional service fee. Comcast charges these basic-only customers only \$2.25 for each HD converter – a charge that is *far below* the \$6.72 rate justified on the FCC Form 1205.

Comcast’s HD Technology Fee is a service fee that effectively authorizes unregulated subscribers to make use of advanced HD services. The FCC long ago recognized that cable operators can introduce supplemental *service* fees on an unregulated basis, even when the underlying *equipment* through which basic service is delivered is subject to regulation. For

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<sup>7</sup> *Aggregation of Equipment Costs by Cable Operators*, 11 FCC Rcd. 6778, ¶ 10 (1996).

<sup>8</sup> Comcast has not yet encrypted any basic services in Massachusetts.

example, in *Comcast of Dallas, LP*,<sup>9</sup> the Commission expressly rejected efforts by a local franchising authority to regulate the rate of a supplemental digital additional outlet charge that was assessed exclusively against subscribers to unregulated service levels. The Commission explained:

An additional outlet charge assessed only against subscribers who receive the CPST or premium programming, though they also subscribe to the BST, is not subject to franchising authority jurisdiction. Similarly, an additional outlet charge assessed only against digital tier subscribers, though they also subscribe to the BST, is not subject to franchise authority jurisdiction. Thus, . . . where Comcast charges specifically for additional outlets used by subscribers to the [unregulated] digital tier, that charge is beyond the regulatory authority of the City.<sup>10</sup>

The City's inaccurate allegations regarding Comcast's HD Technology Fee are allegedly "[b]ased on the facts that the City is aware of in other jurisdictions."<sup>11</sup> The City provides no support from Massachusetts. Such allegations are not a credible basis for Department action in this proceeding.

The City's misunderstanding of Comcast's High Definition Technology Fee is illustrated by the City's erroneous assertion linking the HD Technology Fee to Comcast's equipment credit policy. The City asserts:

As further evidence that HD Fees are equipment fees and therefore subject to regulation, the City understands that customers who employ their own equipment receive a monthly equipment credit for the unused equipment otherwise provided by Comcast.<sup>12</sup>

The \$2.50 equipment credit at issue is *not* in any way tied to the HD Technology Fee. Instead, it applies to Comcast's service packages that expressly include an equipment component. Comcast

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<sup>9</sup> 20 FCC Rcd. 5892 (2005).

<sup>10</sup> *Id.* ¶ 7.

<sup>11</sup> Br. at 5.

<sup>12</sup> Br. at 6. The City raises separate concerns about the equipment credit itself, which are dealt with in the next section of this Response.

does not apply the equipment credit against the HD Technology Fee, nor does it vary the credit amount depending on whether an HD or SD converter is involved.

The City's Brief therefore mischaracterizes Comcast's HD Technology Fee and offers no precedent supporting its request for a dramatic expansion of cable rate regulation to service fees for unregulated services. Accordingly, the City has provided the Department with no credible basis for asserting regulatory authority over Comcast's HD Technology Fee.

#### IV. CABLECARD CREDITS

The City's request seeking Department regulation of "CableCARD" credits is beyond the Department's authority and well outside the scope of this proceeding. The FCC adopted the particular credit obligations referenced in the City's Brief under its Section 629 authority, *not* its Section 623 rate regulation authority.<sup>13</sup> The specific regulation implementing these credit obligations is distinct from the FCC's rate regulations,<sup>14</sup> and the FCC has expressly assumed sole responsibility for enforcing this regulation.<sup>15</sup>

In adopting its requirements regarding equipment credits in 2010, the FCC did *not* amend FCC Form 1205, and nowhere on that rate form are operators instructed to calculate a credit for unused equipment included within subscription packages. To the contrary, the FCC carefully set

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<sup>13</sup> *Commercial Availability of Navigational Devices, Third Report and Order and Order on Reconsideration ("Third Report and Order")*, 25 FCC Rcd. 14657, ¶ 19 n.69 (2010) ("In adopting these rules, we are not relying on our authority under Section 623 but rather on our independent authority under Section 629.").

<sup>14</sup> See 47 C.F.R. § 76.1205.

<sup>15</sup> See *Third Report and Order*, ¶ 19 ("In the event that an interested party (including a consumer, local franchise authority, or device manufacturer) alleges a violation of this 'reasonably allocable' standard, *the Commission* will consider in its evaluation...") (emphasis added).

forth three alternative methodologies for cable operators to calculate and defend unused equipment credits,<sup>16</sup> and those methodologies are in no way related to the FCC Form 1205.<sup>17</sup>

The City itself acknowledges that the Department granted it leave only to “submit a brief addressing its concerns with Comcast’s FCC Form 1205.”<sup>18</sup> As the unused equipment credit issue is clearly not a Form 1205 issue, its inclusion is unwarranted here.

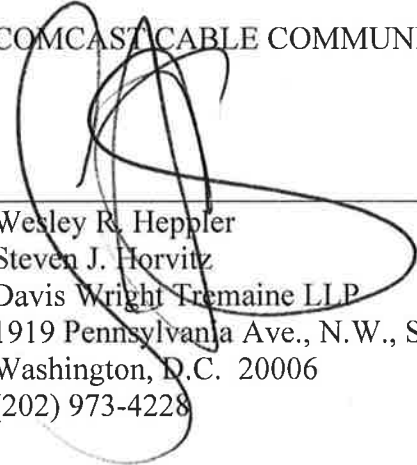
### CONCLUSION

The Department has allowed the City to file a single brief in this proceeding in order to share its alleged concerns about Comcast’s FCC Form 1205 filing. The City has now filed that Brief, but has failed to identify any legitimate basis for the Department to address the issues the City has raised or to expand the scope of its Form 1205 rate review. For the reasons set forth above, Comcast respectfully requests that the Department promptly approve the pending FCC Form 1205.

Respectfully submitted,

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<sup>16</sup> 47 C.F.R. § 76.1205(b)(5)(ii)(B)(2).

<sup>17</sup> For the record, Comcast’s credit policy is in full compliance with FCC requirements. Comcast provides those subscribers who decline Comcast equipment included in a subscription package with a monthly credit of \$2.50. This credit is actually above Comcast’s regulated \$2.25 charge for basic-only customers to secure an HD converter.

<sup>18</sup> Br. at 1 (*citing* Hearing Officer Ruling on Petition to Intervene, D.T.C. 12-2 (Nov. 14, 2012)).

**CERTIFICATE OF SERVICE**

I, Nichele Rice, hereby certify that a true and correct copy of the foregoing RESPONSE TO CITY OF BOSTON'S BRIEF ADDRESSING CONCERNS WITH COMCAST'S FCC FORM 1205 was sent via electronic mail and U.S. Mail to the following parties on December 7, 2012.

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