DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION

	)	Docket No. Y-99 INC, Y-99 EQU (Phase II)	
In the Matter of:	)	Date Issued: July 26, 2000	
	)		
A-R Cable	)	Acton, CUID MA 0196	Hudson, CUID MA 0139
Investments, Inc.	)	Ashburnham, CUID MA 0337	Leominster, CUID MA 0017
	)	Ayer, CUID MA 0257	Lexington, CUID MA 0140
A-R Cable Partners	)	Bedford, CUID MA 0210	Lincoln, CUID MA 0324
	)	Belmont, CUID MA 0316	Littleton, CUID MA 0294
Cablevision of Boston, Inc.	)	Boston, CUID MA 0182	Lunenburg, CUID MA 0077
	)	Boxborough, CUID MA 0289	Lynnfield, CUID MA 0167
Cablevision of Brookline	)	Braintree, CUID MA 0217	Maynard, CUID MA 0146
Limited Partnership	)	Brookline, CUID MA 0219	Norwood, CUID MA 0148
	)	Carlisle, CUID MA 0293	Peabody, CUID MA 0119
Cablevision of	)	Concord, CUID MA 0270	Stow, CUID MA 0256
Framingham, Inc.	)	Danvers, CUID MA 0279	Sudbury, CUID MA 0255
	)	Fitchburg, CUID MA 0015	Templeton, CUID MA 0127
For a Determination of	)	Framingham, CUID MA 0094	Townsend, CUID MA 0296
Cable Television Rates	)	Gardner, CUID MA 0016	Tyngsborough, CUID MA 0232
	)	Georgetown, CUID MA 0133	Westford, CUID MA 0192
	)	Groveland, CUID MA 0071	Westminster, CUID MA 0230
	)	Haverhill, CUID MA 0031	Westwood, CUID MA 0204

RATE ORDER

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I. INTRODUCTION

On October 1, 1998, Cablevision Systems Corporation ("Cablevision" or "the Company")[1] filed with the Cable Television Division ("Cable Division") of the Department of Telecommunications and Energy proposed basic service tier ("BST") programming rates on Federal Communications Commission ("FCC") Form 1240s, and proposed equipment and installation rates on FCC Form 1205s, for all of the above-captioned communities. On May 7, 1999, Cablevision filed with the Cable Division two FCC Form 1235s, "Abbreviated Cost of Service Filing for Cable Network Upgrades;" one for its Boston/Brookline system, and the other for all its suburban Massachusetts communities. These FCC Form 1235s were filed under the FCC's pre-approval option.

The Cable Division held public hearings on Cablevision's pending FCC Form 1240, FCC Form 1205 and FCC Form 1235 filings in Fitchburg on June 9, 1999 and in Boston on August 9, 1999. The City of Boston and the Towns of Brookline, Hudson, Lexington, Lunenburg, Sudbury, Townsend and Westford intervened in this proceeding. The evidentiary record includes 36 Cablevision exhibits and 16 Cable Division exhibits consisting of Cablevision's responses to our information requests, and responses to record requests posed by the Cable Division and the Town of Lexington. Cablevision filed its initial Brief on July 2, 1999 ("Cablevision Brief"). The City of Boston ("Boston") filed a Reply Brief on July 16, 1999 ("Boston Brief"). Cablevision filed its response to the Boston Brief on August 6, 1999 ("Cablevision Reply"). Boston filed further comments on September 10, 1999 ("Boston Reply"). The Town of Brookline ("Brookline") also filed a brief on September 10, 1999 ("Brookline Brief"). Cablevision filed its reply to the Boston Reply and the Brookline Brief on September 24, 1999 ("Cablevision Second Reply").

On September 29,1999, the Cable Division issued a Rate Order concerning

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[1] On October 1, 1998, Cablevision Systems Corporation operated its Massachusetts cable systems through five legal entities. A-R Cable Investments, Inc. held the licenses for 22 communities: Acton, Bedford, Braintree, Fitchburg, Gardner, Georgetown, Groveland, Hanscom Air Force Base, Haverhill, Hudson, Leominster, Lexington, Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Westminster and Westwood. A-R Cable Partners held the licenses for 14 communities: Ashburnham, Ashby, Ayer, Belmont, Boxborough, Carlisle, Concord, Danvers, Lincoln, Littleton, Shirley, Townsend, Tyngsborough and Westford; and Cablevision of Framingham, Inc. held the license for Framingham. Effective May 17, 1999, A-R Cable Partners, Inc. and Cablevision of Framingham, Inc. were merged into Cablevision of Massachusetts, Inc., and effective October 28, 1999, A-R Cable Investments, Inc. was merged into Cablevision of Massachusetts, Inc. These mergers did not affect Cablevision's Boston and Brookline franchises. Cablevision of Boston, Inc. holds the Boston license, and Cablevision of Brookline Limited Partnership holds the Brookline license. All Cablevision communities have requested rate regulation except for the Towns of Ashby and Shirley, and Hanscom Air Force Base.

Cablevision's FCC Form 1240 and FCC Form 1205 filings. A-R Cable Investments, Inc., Acton et al, Y-99 EQU, Y-99 INC. In that Order, the Cable Division approved the BST rates proposed on the FCC Forms 1240 and 1205. Id. The Cable Division continued our investigation of Cablevision's rate proposal under FCC Form 1235. Id. at 2. This Rate Order addresses Cablevision's FCC Form 1235s.

II. THE FCC FORM 1235 APPROVAL PROCESS AND STANDARD OF REVIEW

The FCC developed FCC Form 1235 as an abbreviated cost-of-service filing that enables cable operators to justify rate increases based upon significant capital expenditures used to improve regulated cable services. FCC Form 1235, Instructions for Completion of Abbreviated Cost of Service Filing for Cable Network Upgrades (February 1996) ("FCC Form 1235 Instructions") at 1. The FCC determined that cable operators who make significant upgrades to their systems should be allowed to recover the costs of the upgrade by adding a network upgrade surcharge to their rates otherwise determined pursuant to FCC Form 1240 methodologies. Id. The network upgrade surcharge is not adjusted for inflation but remains unchanged over the useful life of the improvement, which is determined in accordance with the FCC's cost-of-service requirements. Id., See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Adoption of Uniform Accounting System for Provision of Regulated Cable Service: Report and Order and Notice of Further Rulemaking, MM Docket No. 93-215, CS Docket No. 94-28, FCC 94-39, 9 FCC Rcd 4527 ("Cost Order") (released March 30, 1994) at 4676.

An operator, therefore, is permitted to set a BST rate based on two components. The first component is the benchmark rate, i.e., the rate established by FCC Form 1240. The second component is the network upgrade surcharge. The sum of these two components will yield the maximum allowable rate that may be charged to subscribers. Id. Thus, the network upgrade surcharge is a separate calculation on FCC Form 1235 which, if approved, may be added to the overall BST maximum permitted rate ("MPR"). See FCC Form 1235, page 3, Part III, Line 4, and FCC Form 1240 Instructions at 9.

The FCC established five criteria that a cable operator must satisfy in order to be eligible for an FCC Form 1235 rate increase. See Cost Order at 4675-4676; See also Public Notice, Cable Services Bureau Develops System Upgrade Form, DA 95-1893, 11 FCC Rcd 5554 (released September 19, 1995); Marcus Cable Partners, L.L.C., DA 00-1071 (released May 15, 2000) ("Marcus Partners") at ¶ 8. First, the upgrade must be significant and require added capital investment, such as for the expansion of bandwidth capacity and conversion to fiber optics, and for system rebuilds. Cost Order at 4675. Second, the upgrade must actually benefit subscribers of regulated services, through improvements in those services. Id. Third, the operator may not assess the network upgrade surcharge until the upgrade is both complete and is providing benefits to subscribers of regulated services. Id. Fourth, the operator must demonstrate that the amount of the net increase in costs is justified, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in revenues, and expected economies of scale. Id. at 4675-4676. Fifth, the operator must allocate the net increase in costs in conformance with the FCC's cost allocation rules for cost-of-service showings, to assure that only costs allocable to regulated services are imposed on subscribers to those services. Id. at 4676.

An operator who seeks to establish a network upgrade surcharge must file FCC Form 1235 following the end of the month in which the upgraded cable services become available and are providing benefits to customers of regulated services. FCC Form 1235 Instructions at 2. Alternatively, an operator may elect to file for pre-approval at any time prior to the upgraded services becoming available using projected upgrade costs. Id. Under either option, an operator may file the FCC Form 1235 on a system-wide or franchise-wide basis; the communities covered by the filing are referred to as the "filing entity." Id. at 1, 2. The FCC provides that the pre-approval upgrade surcharge may be charged to subscribers "as subsections of the filing entity are completed and begin providing service to subscribers in those subsections." Id. at 2. If a cable operator chooses the pre-approval option, it must refile FCC Form 1235 following the end of the month in which the upgrade is providing benefits to all customers of regulated services in the filing entity. Id. In this filing, the cable operator must substitute actual costs for projected costs. Id.

III. DISCUSSION AND ANALYSIS

A. The upgrade must be significant and meet the FCC=s minimum technical standards

The FCC has established minimum technical specifications that an operator must meet in order to justify an upgrade surcharge. FCC Form 1235 Instructions at 5, Line 1. A system other than a small system meets these specifications if the upgrade increases usable bandwidth to at least 550 megahertz ("MHz") capacity with upgrade capacity to 750 MHz, installs fiber to the node or beyond, and serves no more than 1,500 households per node. Id. If an operator satisfies these minimum technical specifications, its upgrade will be deemed "significant." Id.

The FCC regulations, at 47 C.F.R. § 76.901(c), define a "small system" as one that serves 15,000 or fewer subscribers from the system's principal headend. Both of Cablevision's systems have substantially more than 15,000 subscribers. Cablevision will upgrade 170,821 subscribers in Boston and Brookline, and upgrade 207,841 subscribers in its suburban Massachusetts system, which will be consolidated into a single headend. (Exhs. Cablevision-1 and -6, Attachment X; RR-CATV-11). Thus, Cablevision does not qualify as a small system, and must demonstrate that the upgrade meets the FCC's minimum technical standards.

On its FCC Form 1235s, Cablevision affirmed that its upgrades meet the FCC's minimum technical standards (Exhs. Cablevision-1 and -6 at 2, Part 1, Line A(1)). The Company is upgrading its systems to 860 MHz in Boston and Brookline, and 750 MHz in its suburban Massachusetts franchises (Exhs. Cablevision-1 and -6, Attachment III.21). The Company specifically stated that its upgrades will deploy fiber to the node and serve approximately 500 households per node (Cablevision Brief at 9). We find that based on Cablevision's decision to satisfy the FCC's minimum technical standards, the upgrade will be significant. The Cable Division concludes, on a preapproval basis, that Cablevision has satisfied the first criterion.

B. The upgrade must benefit subscribers of regulated services

The FCC has ruled that in order to satisfy this criterion, an operator is not required to add new channels to the BST. Cox Communications San Diego, Inc., Chula Vista, DA 98-1536 (released August 4, 1998) ("Chula Vista"). In Chula Vista, the FCC permitted the cable company to allocate a portion of its upgrade costs to BST subscribers, even though no additional channels were added to the BST as the result of the upgrade. Id. ¶¶ 4, 15. The FCC concluded: "[s]ubscribers are presumed to benefit from improved service quality and reliability when an operator meets the minimum technical specifications, and no showing of additional channels of service is required." Id. ¶ 9.

In Cablevision's case, no increase in BST channels is planned for Boston and Brookline; there may be channel additions or deletions in suburban communities, as similar channel lineups are implemented (Exh. CATV-11; see also Cablevision Brief at 9-11). However, Cablevision claims subscribers benefit because of improved reliability and picture quality (Cablevision Brief at 11). Because Cablevision will meet the minimum technical standards, its subscribers are deemed to benefit from improved service and reliability. Cablevision has met this second criterion, for purposes of this preapproval filing.

C. The operator may not assess the network upgrade surcharge until the upgrade is both complete and is providing benefits to customers of regulated services

As noted above, Cablevision filed its FCC Form 1235s on a pre-approval basis (Exhs. Cablevision-1 and -6, at 1). In the suburban system, the Company proposes to charge the upgrade surcharge in each community when its upgrade is completed in that community (June 9, 1999 Audiotape, Side 1, at counter no. 414). In the Boston/Brookline system, Cablevision plans to activate the system incrementally by neighborhood (id., RR-CATV-3).

The Company proposes to charge the upgrade surcharge as each neighborhood is upgraded.

Brookline questioned the effective date of the upgrade surcharge in Brookline. According to Brookline, Cablevision represented that it did not foresee any changes in cable services in Brookline before the year 2000 (Brookline Brief at 4). Brookline also noted that the Company had not to date rebuilt its subscriber network in Brookline (id.). Brookline argued that Cablevision cannot increase its rates "until all cable plant is rebuilt" and "actually finished and services are actually added for subscribers" (id. at 4-5).

In response, Cablevision stated that it would not assess an FCC Form 1235 surcharge on any subscriber until that subscriber began to receive upgraded services (Cablevision Second Reply at 8-9). The Company took issue with Brookline's statement that no increases could be implemented until all cable plant is rebuilt, contending that this assertion has been expressly contradicted by the FCC on several occasions (id. at 9, citing FCC Form 1235 Instructions at 2, and Marcus Cable Associates, L.P., DA 97-983 (May 9, 1997)("Marcus Associates") at ¶ 13.). Cablevision stated that there is no requirement that the entire system rebuild be complete before any subscriber may be assessed a Form 1235 surcharge (id.).

The FCC Form 1235 Instructions provide that although a network upgrade surcharge cannot be charged to subscribers until upgraded cable services become available, the surcharge may be charged to subscribers as subsections of the filing entity are completed and begin providing service to subscribers in those subsections. FCC Form 1235 Instructions at 2; Marcus Partners at ¶ 9. While the FCC prohibits the imposition of the surcharge until upgraded cable services become available, it provides for a phased-in approach if the operator's system is upgraded incrementally. Id. Specifically, the surcharge may be charged as subsections of the filing entity are completed and the operator begins providing service to subscribers in those subsections. Id. Thus, Cablevision may charge the surcharge in those areas of Brookline where the upgrade is completed; it is not required to wait until the entire Town is completely rebuilt.

Because Cablevision will not impose the upgrade surcharge on any subscriber until they receive upgraded services, the Cable Division concludes, on a preapproval basis, that Cablevision has satisfied this criterion.

D. The operator bears the burden of demonstrating the amount of the net increase in costs

The Instructions to FCC Form 1235 specifically limit the network upgrade surcharge to "the actual cost of the capital improvement, less any gains realized from the disposition of property, plant, and equipment used prior to the upgrades." FCC Form 1235 Instructions at 1. The Instructions also limit the rate increase to a reasonable return on the net investment in the property, plant and equipment used to provide the upgraded services, and to the additional expenses necessary for the delivery of upgraded services, including depreciation. Id.

We address a number of issues concerning the increases in costs Cablevision proposed.

1. The Cost of the Proposed Upgrade

Boston asserted that with respect to certain elements of the upgrade of the Boston/Brookline system, Cablevision has failed to meet a "prudent investment" standard (Boston Brief at 2). Specifically, Boston questioned two aspects of Cablevision's upgrade. First, Boston contended that the $106.6 million cost of the proposed upgrade reported on the Boston and Brookline FCC Form 1235 was $20 million above the upgrade cost figure that Cablevision advanced during the license renewal negotiations (Boston Brief at 2; see Exh. Cablevision-6 at 4, Worksheet A, Line 4, column (a)). Second, Boston noted that the FCC Form 1235 filing includes rebuild costs based on a ratio of approximately 500 households per node (Boston Reply at 2). According to Boston, Cablevision had advised during the license renewal negotiations that nodes would be installed at one per 1500 households initially, and that "nodes would be installed at one per 500 households if the demand arose" (id., citing Attachment, Boston License Provision ¶ 5.1). Boston argued that Cablevision has no obligation to install a node for each 500 households, and that the installation of nodes at that level, without a franchise obligation, and without evidence that there is market demand for services which would support such an infrastructure, is imprudent and should therefore be denied as an element of the filing (id.)

In response, Cablevision stated that the $106.6 million figure is supported by the worksheets and materials filed as part of its FCC Form 1235 (Cablevision Reply at 2). The Company explained that one reason for the increase in cost estimates is that the upgrade was originally planned to have 750 MHz of capacity, serving 1,500 households per fiber node, whereas the network currently being deployed will have 860 MHz of capacity and will serve approximately 500 households per node (id.). Cablevision asserted that upgrade costs have risen as a result, because the network contains more fiber and more bandwidth than was originally planned (id.). The Company also stated that it had underestimated the unique upgrade costs resulting from Boston's historic landmarks and the need to deploy plant underground (id. at 2-3). Regardless, the Company asserted that the increase in the upgrade's cost over its estimate made during the license renewal negotiations is not a legitimate basis for disallowing any of the costs in the filing (id. at 2). With respect to the number of households per node, the Company observed there is no requirement or rule providing that only capital expenditures associated with upgrade activities expressly authorized in a franchise are eligible to be recovered via the FCC Form 1235 process (id.). Cablevision also countered Boston's position that an upgrade to 500 households per node would be imprudent absent a franchise obligation, by referring to Boston's July 27, 1999 franchise agreement with RCN, which provides a system in which no fiber optic node will serve more than 150 households (Cablevision Second Reply at 3).

The FCC has held that any costs that are not used and useful, such as frivolous or inefficiently incurred, should be deducted from the total cost. Cost Order at 4675. We consider Boston's arguments in light of the FCC's standard. First, we consider whether only those expenses expressly required by the license agreement between Cablevision and Boston should be considered used and useful for ratemaking purposes. This issue does not appear to have been specifically addressed by the FCC. The FCC Form 1235 Instructions do not provide that requirements in a cable franchise have any effect on the rate-setting process. Furthermore, in neither the Cost Order nor the FCC's final Cost-of-Service Order are there any references to or discussions of license negotiations or license provisions as having any effect upon the reasonableness of upgrades. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Adoption of Uniform Accounting System for Provision of Regulated Cable Service: Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, MM Docket No. 93-215, CS Docket No. 94-28, FCC 95-502, 10 FCC Rcd 2219 (released January 26, 1996)("Final Cost Order"). Nor has this question been addressed in any of the FCC Form 1235 Orders cited by the parties. See Chula Vista; Marcus Associates; Bresnan Communications Company, DA 97-2033 (released September 22, 1997) ("Bresnan") and Mountain Cable Company d/b/a Adelphia Cable Communications, DA 99-1434 (released July 22, 1999). We, like Cablevision, can find no regulatory requirement that only capital expenditures associated with upgrade activities expressly authorized in a franchise are eligible to be recovered via the Form 1235 process.

However, the FCC has held that, although the cable operator bears the burden of demonstrating the accuracy of its rates, if the bases of the figures on the rate form are undisputed and the form is mathematically correct, the local rate regulator should approve the rates on the form. Marcus Partners, ¶¶ 3, 4. In three recent cases, the FCC has made it clear that local rate regulators cannot disregard the rates set by forms whose figures are unquestioned and the mathematics accurate. TCI Cablevision of Dallas, Inc., Request for Stay of Local Rate Order, DA 00-1240 (released June 6, 2000); TCI Cablevision of California., Inc., DA 00-1148 (released May 25, 2000), and TCI TKR of Georgia, Inc., DA 00-1149 (released May 25, 2000). Boston does not challenge the mathematical accuracy of Cablevision's FCC Form 1235, but only the included costs to the extent they exceed the license requirements.

The FCC stated in the Cost Order: "[w]e anticipate that issues of allowable costs can be resolved if raised by comparison with costs of similar systems and, in particular, systems subject to competition." Cost Order at 4675. Boston contends that Cablevision's proposal to upgrade its system to 500 households per fiber node contradicts the licensing agreement's provision that nodes would initially be installed at one node per 1500 households (Boston Reply at 2). Cablevision observed that Boston's July 27, 1999 franchise agreement with RCN-BecoCom, L.L.C. provides for fiber to be provided to no more than 150 households per node (Cablevision Second Reply at 3).[2] Because of the RCN license provision, the Cable Division cannot conclude at this time that Cablevision is acting imprudently by upgrading its system from 1,500 households per node to 500 households per node.

Nevertheless, the FCC has provided an additional test with which to evaluate Cablevision's upgrade costs, which the Cable Division will apply when the Company files its final FCC Form 1235 for Boston and Brookline. The FCC's rate regulations require that excess capacity should be excluded from the rate base. The regulations state that the rate base may include "[t]he portion of the capacity of plant not currently in service that will be placed in service within twelve months of the end of the test year." 47 C.F.R. § 76.922(i)(6)(viii). The FCC also made it clear, in discussing its FCC Form 1235 procedure, that only plant actually put in service to provide regulated services may be included in the rate base. Any costs that are not used and useful will be deducted from total costs. Cost Order at 4675. Accordingly, when Cablevision files its final FCC Form 1235 for Boston and Brookline, the Cable Division will evaluate whether any of Cablevision's upgrade investments have not resulted in used and useful plant for BST subscribers, and should be excluded from the computation of the final surcharge.

2. Issues related to the Upgraded Brookline Plant

Brookline raised issues concerning the Company's alleged representation to Brookline in June 1999 that it would not be replacing drops (Brookline Brief at 4). Brookline asked how this representation comports with the substantial costs for drops shown on FCC Form 1235 (id.). Cablevision challenged Brookline's assertion, and estimated that 50 percent of its drops will have to be replaced (Cablevision Second Reply at 8). In any event, Cablevision stated that it will correct any variances between estimated and actual feeder plant and drops in its final FCC Form 1235 (id. at 7, 8). The Cable Division accepts as reasonable at this time the costs for drops reported on Cablevision's current filing, and will evaluate the actual costs reported for drops on its final FCC Form 1235 for Boston and Brookline.

3. The Increase in Amplifiers and Powering Expenses

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[2] See the Final Cable Television License granted to RCN-BecoCom, L.L.C. on July 27, 1999 by Thomas M. Menino, Mayor of the City of Boston. This document is filed as a public document with the Cable Division pursuant to G.L. c. 166A, § 3. The Cable Division hereby takes administrative notice of this License pursuant to G.L. c. 30A, § 11(5) and 801 CMR 1.01(10)(h).

Boston questioned Cablevision's statement that the increase in the Company's system electric power expenses shown on FCC Form 1235, Attachment IV arises out of an increase in the number of amplifiers used in the system (Boston Brief at 3). Boston claimed that this additional expense directly contradicts statements Cablevision made in the amended proposal for its renewal license, where the Company stated that the rebuild would improve system reliability through the use of fewer amplifiers (id. at 4). Brookline also raised a question concerning the number of amplifiers. It argued that the deployment of fiber generally (i) obviates the need for the number of amplifiers that the current coaxial system requires and (ii) reduces maintenance costs, and should therefore lead to lower equipment and maintenance costs on the FCC Form 1235 filing (Brookline Brief at 7).

Cablevision responded by explaining the difference between the decrease in the amplifiers deployed in cascade,[3] and the increase in amplifiers between the fiber node and the subscriber's premises (Cablevision Reply at 4-5). Cablevision explained that the increase in the number of power supplies in the upgraded system is due to the increase in the total number of amplifiers (RR-CATV-3). The upgrade will make it unnecessary to deploy amplifiers in cascade in the trunk and primary feeder portion of the network due to the deployment of fiber closer to the home (id.; Cablevision Reply at 4). However, according to Cablevision, more amplifiers must be used in the remaining coaxial portion of the network between the end of the fiber (the fiber node) and the subscriber's premises (RR-CATV-3). If two amplifiers had been used in the last half-mile of cable plant, three amplifiers will be needed to cover the same distance (id.). This reflects the fact that the amplifiers will be required to handle more bandwidth, and thus must be spaced more closely together (id.). The total number of amplifiers in the system will therefore increase, and there will be increased power consumption per amplifier station, effectively doubling the amount of system electronics used (id.). The addition of return path amplifiers also increases the power load (id.).

The Company also provided a pre- and post- upgrade power cost analysis for five rebuilt areas; Braintree, Westwood, Hyde Park, West Roxbury and Roslindale (id.).[4] This analysis reports an increase in kilowatt hours per month from 48,212 before the upgrade to 93,701 kilowatt hours after the upgrade (id.). The Company further explained that its filing does assume that network maintenance costs will fall during the early years of the upgrade, and these savings are included on the FCC Form 1235 (Cablevision Second Reply at 12-13). However, according to the Company, these savings are offset by increases in other plant-related operating expenses, particularly powering costs and salary increases attributable to

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[3] "In cascade" is defined as "[a] series of components or networks the output of each of which serves as the input for the next." American Heritage Dictionary, Second College Edition (1985) at 244.

[4] Hyde Park, West Roxbury and Roslindale are neighborhoods within the City of Boston.

additional personnel (id. at 13).

The Cable Division accepts as reasonable at this time the Company's inclusion of additional amplifiers as capital expenditures on FCC Form 1235, Attachment III. The Cable Division also accepts as reasonable at this time Cablevision's inclusion of additional system electric power expenses reported on FCC Form 1235, Attachment IV. The actual costs will be reviewed in Cablevision's final FCC Form 1235. However, the assignment of the costs of these additional amplifiers and powering expenses to cable services must be adjusted as ordered by the Cable Division at Section E.2, below.

4. Multiple Dwelling Unit Rebuild Costs

Boston noted that Cablevision shows $319.6 million for multiple dwelling unit ("MDU") plant which, it asserted, was 87 percent of Cablevision's budget for the construction of its underground distribution system (Boston Brief at 4). Boston questioned the need for this expenditure (id. at 5). Cablevision merely responded that Boston had made a typographical error, and that the appropriate figure was $19.6 million, not $319.6 million, without further explanation (Cablevision Reply at 5, n.12). The Cable Division has reviewed Attachment III to FCC Form 1235, entitled "Rebuild Plant Addition and Depreciation Detail," at "Calculation of Weighted Average Useful Life Rebuild Assets (Excluding AFUDC)" (Exh. Cablevision-6). Upon review of this Attachment we find that the total rebuild assets of $106.6 million consist of a number of components (id.). These include not only $19.6 million for MDU plant, but also $14.7 million for fiber optic cable, $9.8 million for headend equipment, $10.3 million for overhead distribution plant, and $22.5 million for underground distribution plant (id.). The implication that the $19.6 million in MDU plant is included as part of the $22.5 million for underground distribution plant is therefore incorrect. Upon review of Attachment III, we find at this time that Cablevision's MDU plant costs are reasonable.

5. The Apportionment of the Upgrade Costs between Boston and Brookline

Brookline argued that the apportionment of the upgrade costs between Boston and Brookline is inappropriate (Brookline Brief at 2). Brookline alleged that Cablevision has apportioned 25 percent of the upgrade costs to Brookline, even though Brookline has only 10 percent of the system's subscriber base (id.). Brookline argued that only upgrade costs associated with Brookline cable services may be passed on to Brookline subscribers (id. at 8). Brookline suggested that an apportionment of upgrade costs based on the number of each community's subscribers is appropriate (id. at 2). According to Brookline, such a method of apportionment is reasonable, especially if more equipment and facilities are located in one community than in another, or if the equipment is installed as the result of negotiations between Boston and Cablevision (id.). Brookline also requested that the Cable Division require the

Company to file an FCC Form 1235 for Brookline only (id. at 7).

Cablevision responded that the FCC Form 1235 Instructions expressly authorize cable operators to file on either a system-wide or franchise-wide basis (Cablevision Second Reply at 5). The Company argued that the choice of whether to file on a system-wide or franchise-wide basis is entirely the operator's. According to Cablevision, there is no basis for mandating that it file a franchise-specific filing for Brookline, since such a requirement clearly would defeat the streamlined nature of the Form 1235 process (Cablevision Second Reply at 5-6).

The FCC gives cable operators the option of filing on a system-wide or franchise-wide basis. FCC Form 1235 Instructions at 1. The FCC Form 1235 Instructions also explicitly state that if an operator elects to file an FCC Form 1235 on a system-wide basis, upgrade costs need not be broken down to the franchise level. Id. at 4. Therefore, there is no valid legal basis for Brookline's assertion that Cablevision must provide either a separate Brookline FCC Form 1235, based on a rate calculation based on subscriber counts in each community.[5]

6. The Boston Institutional Network

Boston contended that the Company's $2.5 million in projected expenses for the upgrade of the Boston Institutional Network, or "I-Net," should be disallowed as a cost of the upgrade (Boston Brief at 2-3; see Exh. Cablevision-6 at 4, Line 1, BST). Brookline also suggested that I-Net costs not be included in the FCC Form 1235 filing (Brookline Brief at 3).

Cablevision conceded that the $2.5 million in upgrade costs should not be included (Cablevision Reply at 3). The Company also agreed that the computation of the permissible upgrade surcharge amount should be revised to reflect the exclusion of the I-Net upgrade costs from the Form 1235 filing submitted for the Boston system (id.). Cablevision also accepted Boston's position that the allowance for funds used during construction ("AFUDC") and the annual depreciation expense associated with the upgrade should be excluded (Boston Reply at 1; Cablevision Second Reply at 2). The Cable Division directs Cablevision to remove both the capital and operating I-Net costs and their associated AFUDC and depreciation from the FCC Form 1235.

7. Public, Educational and Governmental Access Costs

5 The Town of Lexington ("Lexington") also suggested that Cablevision should file an FCC Form 1235 applicable only to the Lexington and Bedford system (June 9, 1999 Audiotape, Side 2, at counter nos. 702-712). For the reasons stated above, Cablevision cannot be required to file a separate FCC Form 1235 for Lexington and Bedford.

Brookline, without taking a position or providing argument in support, asked the Cable Division to verify how the Company is reporting for rate purposes the public, educational and governmental ("PEG") access costs mandated by the Brookline renewal license (Brookline Brief at 7). Cablevision replied that no PEG access costs are included in Cablevision's FCC Form 1235 filings (Cablevision Second Reply at 13). The Cable Division has reviewed the Company's FCC Form 1235, and finds the Company's assertion to be accurate.

8. Incremental Revenues from Advertising, Home Shopping Services and Video-on-Demand

Brookline questioned Cablevision's FCC Form 1235 to the extent it included no incremental revenues from advertising, home shopping or video-on-demand (Brookline Brief at 6). Cablevision responded that since the Company is not adding any advertiser-supported channels to its basic service, or any home shopping channels to the system as a whole, there would be no offsetting incremental revenues on the BST (Cablevision Second Reply at 12). As for video-on-demand and other pay-per-view revenue, the Company stated that because the FCC Form 1235 Instructions provide that ancillary revenue offsets should be allocated to the tier of service from which the revenues are generated, it would be inappropriate to offset BST costs with revenues from such services (id.).

The FCC Form 1235 Instructions state explicitly that operators must only allocate such revenues to regulated service cost categories if such revenues are associated with program offerings on regulated channels. FCC Form 1235 Instructions at 11. Therefore, revenue offsets to regulated costs are only appropriate if the channels generating revenue are offered on regulated channels. Cablevision is adding no revenue-generating channels to the BST tier. (Exh. Cablevision-6, Channel Lineup at Rebuild Completion). Accordingly, the Cable Division accepts as reasonable at this time Cablevision's position that there are no incremental revenues to offset BST costs on the Boston and Brookline FCC Form 1235.

9. Savings Related to Eliminated Plant

Lexington contended that Cablevision's costs are not justified because the Company did not include any plant-related savings in the suburban Massachusetts FCC Form 1235 filing (RR-Lexington-1). Cablevision responded that it had incorrectly included plant-related savings related to headend powering, plant powering and lease terminations for the eliminated headends as offsets to the operating expenses associated with powering and new hub site locations (id.). The Attachment IV sheet "Plant Related Operating Expenses" therefore showed only net expenses after the savings were removed. The Company reported that it should have listed these savings on a separate schedule, and accordingly revised the Attachment IV to its FCC

Form 1235, supplying two new pages that showed gross plant related operating expenses on one page and expense savings on a second page (id.). The Cable Division finds that as refiled, these attachments accurately account for these expenses and savings. Since there is no change to the net expenses already included in the FCC Form 1235, there is no rate impact. The Cable Division accepts these additional pages as filed.

10. Salvage Value

Boston contended that Cablevision should include, in the Boston and Brookline FCC Form 1235, an offset for the salvage value of elements of the plant or electronics that are being replaced as part of the upgrade of the headend (Boston Reply at 1-2). Boston proposed that a salvage value of $175,000 be offset against Cablevision's proposed capital expenditures (id. at 2; see RR-CATV-11). Boston based its estimate of salvage value on Cablevision's identification of salvage value in its suburban Massachusetts system (RR-CATV-11). Cablevision responded that the estimated salvage value of $175,000 identified by the Company applied only to its suburban Massachusetts system, and not to the Boston/Brookline system (Cablevision Second Reply at 2). According to Cablevision, the consolidation of headends and hubs in its suburban system will enable the Company to discontinue its use of some duplicative equipment, thereby generating some salvage value (id. at 3). Cablevision explained that no such headend or hub consolidation is involved in the Boston and Brookline upgrade (id.). Moreover, Cablevision argued, even if plant were replaced in the Boston/Brookline system because of the rebuild, the cost of taking down and removing the obsolete plant would likely exceed its salvage value (id.).

As we have noted, Cablevision has filed its Boston and Brookline FCC Form 1235 for pre-approval only. Following the completion of the upgrade, the Company is required to file an updated FCC Form 1235 for final approval. The Cable Division accepts Cablevision's conclusion that there is no salvage value in its Boston/Brookline system for the purposes of this pre-approval only. We note the network upgrade surcharge is limited to "the actual cost of the capital improvement, less any gains realized from the disposition of property, plant, and equipment used prior to the upgrades…." FCC Form 1235 Instructions at 1. (Emphasis added.) Should any portion of the Boston and Brookline plant or electronics be found to ultimately have salvage value, we direct Cablevision to make the appropriate adjustments on its final FCC Form 1235.

11. Conclusion

To the extent that Cablevision has provided adequate justification for its higher costs, the Cable Division concludes that the Company has satisfied this fourth criterion, for preapproval purposes.

E. Subscribers shall only pay for cost increases allocable to regulated services

The FCC addressed the proper method to allocate costs to regulated services in Chula Vista. In that Order, the FCC held that cable operators must allocate the plant in service between regulated and unregulated services based on a reasonable measure of the current usage of the plant. Chula Vista at ¶ 10. Only plant used and useful in the provision of regulated services should be included in the rate base. Id. This ensures that subscribers to regulated tiers are not forced to subsidize plant that is used solely for premium or other unregulated services. Id.

Two issues have arisen concerning the assignment and allocation of upgrade costs between regulated and unregulated services. Specifically, we consider Cablevision's treatment of the bandwidth used for upstream signal carriage, known as the "return path," and the inclusion of expenses related to certain administrative and operational personnel and additional powering requirements.

1. The Treatment of the Return Path

The lowest 54 MHz of Cablevision's upgraded cable system is its return path (June 9, 1999 Audiotape, Side 1, at counter nos. 449-451). Cable operators use the return path to carry signals upstream from the subscriber to the operator; the bandwidth above 54 MHz is used for downstream signals from the operator to the subscriber. At the August 9, 1999 public hearing, Cablevision testified that the upgraded return path would carry upstream messages for its new ancillary services, video-on-demand, Internet services, and telephony (August 9, 1999 Audiotape, Side 1, at counter nos. 427-431). Cablevision has assigned the 54 MHz of the return path to cable services (Exhs. Cablevision-1 and -6, Attachment III.1).

The issue is whether all 54 MHz of the return path should be assigned to cable services (RR-CATV-9). The Company claimed that any portion of the bandwidth used to carry upstream signals for ancillary services already has been excluded from the computation of the network upgrade surcharge, through the assignment to non-cable services of 10 percent of the capital expenditures related to the upgrade (id.). However, this claim is inconsistent with the assignments Cablevision reported on its FCC Form 1235s. On the FCC Form 1235 for Boston and Brookline, the Company assigned 0 to 774 MHz, or 90 percent, of its upgraded 860 MHz system to cable services, with the upper 10 percent of the bandwidth either assigned to ancillary services or else unused (Exh. Cablevision-6, Attachment III.1). Similarly, on the FCC Form 1235 for suburban Massachusetts, the Company assigned 0 to 678 MHz, or 90.4 percent, of its upgraded 750 MHz system to cable services, with the upper 9.6 percent assigned to ancillary services (Exh. Cablevision-1, Attachment III.1).

Because Cablevision assigned the lower 90 percent of its MHz to cable services (90.4 percent in Suburban Massachusetts), that part of the 0 MHz to 54 MHz return path used for ancillary services could not have been included in the 10 percent (or 9.6 percent) the Company assigned to ancillary services on its FCC Form 1235s. Otherwise, the percentage assigned to ancillary services would have exceeded 10 percent, incorporating both the upper

10 percent of the bandwidth and that portion of the return path the Company will employ for ancillary services. Instead, Cablevision assigned all 54 MHz of the return path to cable services. Given that Cablevision will use a portion of its return path for ancillary services, that portion must be assigned to those services on FCC Form 1235. Accordingly, the Cable Division directs Cablevision to refile its pre-approval FCC Form 1235s with the appropriate portion of the 54 MHz return path assigned to ancillary services.

2. The Inclusion of Additional Operational and Administrative Personnel, and Additional Powering Requirements

Cablevision reported that substantial increases in personnel, as well as increases in powering needs, will result from the upgrades of both the Boston/Brookline and the suburban Massachusetts systems (Exh. CATV-15(a)). However, on its FCC Form 1235s, the Company did not assign any portion of these net cost increases to ancillary services, as "All Other" on Worksheet A, Part 1, "Directly Assigned Cost Elements" (Exhs. Cablevision-1 and -6, FCC Form 1235 at 4, Lines 5 and 6). Instead, the full amount of the cost increases were allocated among the four categories of cable services on Worksheet A, Part 2, "Allocated Cost Elements" (id. at 5, Lines 5 and 6; see id. at 7 for allocation percentages). This differs from Cablevision's treatment of the capital expenditures for its upgrades. Cablevision explained that it had not directly assigned any costs to ancillary services associated with additional personnel and powering requirements, because these costs are necessary to support the upgraded cable system (Exh. CATV-15(a)). Consequently, BST subscribers would be required to pay a larger percentage of the upgrades' operating and administrative costs than they would pay of the upgrades' capital expenditures.

The issue is whether a portion of the net operating and administrative cost increases resulting from the upgrades should be directly assigned to the Company's new ancillary services. In considering the reasonableness of Cablevision's approach, the Cable Division reviewed the Company's explanation for its net increases in operating and administrative costs. Its operating expenses in the Boston/Brookline system will be increased by the addition of four fiber technicians and four headend technicians (id.). In addition, powering needs are projected to increase from current levels by 15 percent annually (id.). In Cablevision's suburban Massachusetts system, operating expenses will be increased by the addition of five fiber technicians, five headend technicians and one supervisor (id.). The suburban system's powering needs will also increase, although the Company did not specify a percentage (id.). Cablevision also expects net administrative cost increases due to the addition of support personnel. In Boston and Brookline, the Company will add eight customer service coordinators, two dispatchers, four field service representatives and two fleet maintenance personnel; in suburban Massachusetts, the Company will add six customer service coordinators and six sales representatives (id.).

Cablevision stated that its additional fiber technicians and headend technicians will be "directly involved in the operation and maintenance of the fiber plant and headend operations as a result of the upgrade" (id.). The Company made no representations that these activities will be limited to cable television services. The same is true for the increases in Cablevision's powering requirements. The powering increases are caused by the upgrade's changes to the network, especially changes in the use of amplifiers, but they are not specifically related to either the cable or the ancillary services the Company is offering (RR-CATV-3). Therefore, the Cable Division concludes that Cablevision's operating cost increases should be assigned to both cable and ancillary services, in the same manner that it has assigned the upgrade's capital expenditures. The Cable Division directs Cablevision to refile its FCC Form 1235s with an assignment of operating cost increases to ancillary services, on the same basis as the Company assigns its capital expenditures as adjusted pursuant to this Rate Order.

Cablevision assigned its additional customer service, sales and other administrative personnel entirely to the cable portion of the upgrade. The Company stated that "[t]hese positions are new and directly related to plant upgrade support functions that are added solely for [cable] services as a result of the upgrade" (Exh. CATV-15(a)). Cablevision stated that these positions will be needed in the period immediately after the completion of the upgrade "to handle questions, concerns and general inquiries from subscribers concerning their existing or upgraded levels of service" (RR-CATV-4). Unlike the new operating personnel and its additional powering requirements, whose efforts presumably will be called upon over the entire ten years of the upgrade, these administrative personnel appear to be primarily necessary during and immediately after the actual upgrade is implemented. The Company has presented no evidence that it plans to introduce its new ancillary services at the same time that it upgrades its plant, thus making it unrealistic to specifically assign any portion of these new administrative costs to ancillary services. We find that it is reasonable for Cablevision to assign its additional customer service, sales and other administrative personnel entirely to the cable portion of the upgrade.

3. The Exclusion of Plant That is Not Used and Useful from the Boston and Brookline FCC Form 1235

Boston argued that the cost of the upgrade should be reduced to exclude the plant that will be used for ancillary services, on the basis that it is not used and useful plant for cable customers (Boston Brief at 5). In the alternative, Boston argued that Cablevision's allocation of costs should be revised substantially, based on the number of channels available to BST subscribers versus those available to subscribers of upper level services (id. at 6). Boston noted that Attachment IX to FCC Form 1235 lists 129 channels, not the 115 channels shown on Worksheet B (id.). Boston asserted that the extra 14 channels reported on the FCC Form

1235, Attachment IX, 10.85 percent of the total lineup, would not provide any cable services, and thus 10.85 percent of the costs of the rebuild should be removed from the rate base (id.).

In response, Cablevision asserted that it had made the exclusion recommended by Boston (Cablevision Reply at 7). The Company explained that 14 of its 129 channels would not be used for cable services (id.). It stated that Boston incorrectly concludes that the Company included these 14 non-cable channels in the 115 channels that are used to allocate cable upgrade costs between the various tiers of cable service on FCC Form 1235, Worksheet B (id. at 7-8). In fact, the Company argues, these non-cable channels were excluded.

The Cable Division has reviewed Cablevision's FCC Form 1235. On Attachment IX, 12 channels are designed for ancillary services, and two are unused. We have confirmed that the Company has properly excluded these 14 non-cable channels listed on Attachment IX from Worksheet B, which specifies the allocation methodology for cable services.

4. Internet Services

Brookline raised two concerns about Internet services. It cited representations by Cablevision to Brookline that the upgrade was being undertaken, at least initially, to provide cable modem Internet service (Brookline Brief at 5). It also cited Cablevision's position that cable modem service is not a cable service (id. at 6). Further, Brookline claimed that Cablevision represented that the Company's Amory Street hub was being enlarged for Internet purposes (id.). Based on these Company representations, Brookline urged the Cable Division to ensure that all upgrade costs and assets ascribed to non-regulated services not be passed through to Brookline cable subscribers (id. at 6, 7). In response, Cablevision stated that while cable modem service is one important reason for the rebuild, it is not the sole or even primary reason (Cablevision Second Reply at 10). The Company reported that costs associated with ancillary services have been excluded from the filing (id. at 10-11). According to Cablevision, this is also true of headend and hub facility costs (id.).

The Cable Division recognizes that Cablevision's FCC Form 1235 filing assigns the costs of the upgrade into cable and ancillary components, with cable modem service included among the ancillary services. After Cablevision's cost assignments are revised pursuant to this Rate Order, we conclude that the concerns raised by Brookline will be fully addressed.

5. Conclusion

The Cable Division concludes that Cablevision's FCC Form 1235 filings do not entirely satisfy this fifth criterion, and that adjustments are needed. As we stated above, Cablevision must refile its pre-approval FCC Form 1235s with the appropriate portion of the 54 MHz return path assigned to ancillary services, and with its operating costs also assigned between cable and ancillary services. These adjustments will reduce slightly the Company's surcharge.

F. Cablevision's Final FCC Form 1235 Filings

Cablevision is required to file new FCC Form 1235s for final approval once its upgrades are completed. FCC Form 1235 Instructions at 2. These FCC Form 1235s must report actual costs where possible, substituting actual costs for projected costs. Id. Cablevision must adjust for the actual costs of the upgrade in its final FCC Form 1235 filings, and adjust its surcharges accordingly. Cablevision will be liable for refunds if the surcharges established by the Cable Division the final FCC Form 1235 are lower than the surcharges implemented by the Company pursuant to this Rate Order.

IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby directs Cablevision to refile in compliance with this Rate Order its two combined FCC Form 1235s, one filed for Boston and Brookline, and the other filed for the suburban communities of Acton, Ashburnham, Ayer, Bedford, Belmont, Boxborough, Braintree, Carlisle, Concord, Danvers, Fitchburg, Framingham, Gardner, Georgetown, Groveland, Haverhill, Hudson, Leominster, Lexington, Lincoln, Littleton, Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Townsend, Tyngsborough, Westford, Westminster and Westwood, with adjustments to the assignment of the return path and the assignment of additional operating expenses on both FCC Form 1235s, and with the removal of both the capital and operating I-Net costs and their associated AFUDC and depreciation from the Boston and Brookline FCC Form 1235, on or before August 11, 2000.

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.