



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

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In the Matter of)	Docket No. CTV 02-4
Cox Com, Inc.)	Date Issued: March 28, 2003
d/b/a Cox Communications)	
New England)	
)	
For a Determination of)	Holland, CUID MA 0321
Cable Television Rates)	
)	
_____)	

RATE ORDER

APPEARANCES: Alan D. Mandl, Esq.
Mandl & Mandl, LLP
10 Post Office Square, Suite 630
Boston MA 02109
FOR: COX COM, INC.
Petitioner

I. INTRODUCTION

On May 1, 2002, Cox Com, Inc., d/b/a Cox Communications New England (“Cox” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy (“Department”) proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240 and equipment and installation rates on FCC Form 1205 for the Town of Holland. Pursuant to Section 76.933(g) of the Code of Federal Regulations, the rates Cox proposed in its FCC Forms 1240 and 1205 filings became effective on August 1, 2002.

The Cable Division held a public and evidentiary hearing on Cox’s pending filing in Boston on February 26, 2003.¹ There were no intervenors in this proceeding. The evidentiary record consists of three Cox exhibits, including the Company’s rate forms and proposed rate structure, nine Cable Division exhibits, and Cox’s responses to four record requests posed by the Cable Division.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which a cable operator must calculate its rates. The FCC Form 1240 allows a cable operator to annually update its BST programming rates to account for inflation, changes in external costs, and changes in the number of regulated channels. In order that rates be adjusted

¹ The hearing was originally scheduled for February 11, 2003. However, due to the Company’s failure to provide reasonable notice pursuant to G.L. c. 166A, § 15, and 207 C.M.R. § 2.02, the Cable Division rescheduled the hearing.

on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. §§ 76.922(e)(2)(ii)(A) and 76.922(e)(2)(iii)(A). Cable operators may also project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable; however, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A).

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. FCC Form 1205 Instructions at 7, 12-13. The FCC Form 1205 is prepared on an annual basis using information from the cable operator's previous fiscal year. *Id.* at 2. Subscriber charges established by the FCC Form 1205 shall not exceed charges based on actual costs as determined in accordance with the FCC's regulatory requirements. 47 C.F.R. § 76.923(a)(2).

The standard under which the Cable Division must review rate adjustments on the FCC rate forms is found in the FCC's rate regulations. Specifically, the regulations provide that the rate regulator shall assure that the rates comply with the requirements of Section 623 of the Communications Act of 1934, as amended. 47 U.S.C. § 543; 47 C.F.R. §§ 76.922, 76.923, and 76.930. The Cable Division may accept as in compliance with the statute BST rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by federal regulations. *See* 47 C.F.R. § 76.922(c). The Cable Division may also accept equipment and installation charges that are calculated in accordance with federal regulations.

See 47 C.F.R. § 76.923. In addition, the Cable Division shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 U.S.C. § 543; 47 C.F.R. §§ 76.937(d) and (e), and 76.942.

The burden of proof is on the cable operator to demonstrate that its proposed rates for BST programming and accompanying equipment comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (released May 3, 1993) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

III. DISCUSSION AND ANALYSIS

A. Interest-on-Interest in True-Up Calculations

For those cable operators employing the annual rate adjustment method, the first step in completing an FCC Form 1240 is to enter on Line A1, “Current Maximum Permitted Rate,” the amount reported on the previous FCC Form 1240 at Line I9, “Maximum Permitted Rate for Projected Period.” FCC Form 1240 Instructions at 12. In the previous Rate Order issued March 29, 2001 (“2001 Rate Order”)², the Cable Division rejected Cox’s methodology for

² Cox deferred rate increases and delayed its filing date from October 2001 to May 2002. As such, the decision issued on March 29, 2001, constitutes the most recent Rate Order.

calculating its true-up adjustment and ordered a revised filing that would affect Line A1 in the current filing. 2001 Rate Order at 3-6.

Specifically, the Cable Division found that by claiming the entire true-up and not passing it through to subscribers, Cox would be able to accrue interest for a second time on the following FCC Form 1240 filing. Id. at 4. The Cable Division rejected Cox's FCC Form 1240 and directed Cox to refile its FCC Form 1240 to include at Line H14, "Amount of True-Up Claimed for this Projected Period," only the amount of true-up that the Company actually included in subscribers' BST rates. Id. at 6. This adjustment would alter the amount reported on Line I9 of the previous Form and hence Line A1 of the current filing.

Upon appeal, the Department affirmed the Cable Division's decision. Order on CoxCom, Inc.'s Appeal of Cable Television Division's Rate Order, D.T.E. 01-44 (April 26, 2001). On May 29, 2001, Cox appealed the Department's decision to the Media Bureau of the FCC. The Media Bureau granted Cox's appeal on April 29, 2002, and determined that the decision of the Department was not reasonable. See CoxCom, Inc., d/b/a/ Cox Communications New England, DA 02-967 (released April 29, 2002) ("Cox"). On May 29, 2002, the Department appealed Cox to the full Commission of the FCC, which has not yet issued a decision.

The Company completed its current FCC Form 1240 in compliance with the precedent set by the Media Bureau. Therefore, the Cable Division finds that the Company's proposed rates are reasonable and appropriate pursuant to the Media Bureau's precedent, as that is authoritative as of the date of the issuance of this Rate Order. However, in the event the

Commission overturns the Media Bureau's decision, the Company will be required to implement the directives given in the 2001 Rate Order. At that time, the Cable Division will also order adjustments to the current FCC Form 1240.

B. Programming and Copyright Costs

Cox included a Subscriber Cost Worksheet detailing its BST programming and copyrights costs in its FCC Form 1240 filing. In reviewing the filing, the Cable Division noted that in January of 2002, the programming costs decreased and the copyright costs increased. While these cost changes are independent of each other, both costs typically derive from channel additions or deletions. However, there was no note of any channel changes on the FCC Form 1240 or the supporting documentation.

Cox indicated that the programming costs decrease was related to a contract renegotiated with TV Guide (RR-Cox-4). With respect to the copyright costs increase, Cox conceded that while the copyright costs used on the FCC Form 1240 were correct, the column reflecting the monthly copyright rate in the Subscriber Cost Worksheet was erroneous (id.). Cox submitted a revised schedule showing the actual copyright rates per month (see Revised Subscriber Cost Worksheet dated Feb. 27, 2003). Because the FCC Form 1240 reflected the correct copyright costs per month for the BST, no adjustments were needed to the Form. The Cable Division finds Cox's programming and copyright costs as calculated on the FCC Form 1240 and the revised schedule to be reasonable.

C. Hourly Service Charge

The primary rates determined on the FCC Form 1205 are those for equipment lease and service installation. The converter lease rate is derived from a calculation of the capital costs incurred for the purchase of converters, along with associated depreciation, the number of converter repair hours, and the hourly service charge ("HSC"). While substantiation was provided for the capital costs and associated depreciation and the number of converter repair hours, the Cable Division questioned the appropriateness of Cox's HSC of \$53.25 given that it is significantly higher than that of other cable operators serving Massachusetts subscribers (Hearing Audio Tape, Side A, Counter Nos. 334-385).

Cox provided a comparison that highlighted various areas of difference, such as the inclusion by Cox of substantially higher salaries, both for full-time and contract employees, than those provided by other cable operators (RR-Cox-3). Cox indicated, however, that it could not determine the factors driving the higher HSC based solely on a review of the other cable operators' FCC Forms 1205 (id.).

When, as here, the composition of the converter stock contains a significant number of newer units, the capital cost and associated depreciation element of the rate calculation will constitute a higher percentage of the converter lease rate. As the units age, a larger portion of the converter lease rate will be attributable to the maintenance costs of these older units. In this instance, Cox has introduced a significant number of new, and more expensive, digital units into service. See FCC Form 1205 filed May 1, 2002; FCC Form 1205 filed October 23, 2000. The capital cost impact of these new units more than offsets any increased

allocation of operating expenses resulting from the higher HSC. Further, Cox has elected not to charge the MPR for its converters. Rather, it is charging a converter lease rate that is \$.65 less than its MPR. In this instance, the converter lease rate Cox is charging subscribers would not decrease if the operating costs were removed from the calculation. Therefore, while the Cable Division is concerned about the composition of the FCC Form 1205 costs, particularly those on Schedule B, we will approve Cox's FCC Form 1205 rates at this time.

As noted above, maintenance costs will drive future calculations as the units age. Therefore, we put Cox on notice that in its subsequent rate filings, the Cable Division will pay particular attention to the specific costs, including salaries, used in preparing the FCC Form 1205. Cox should be prepared to provide extensive in-depth back-up to facilitate the Cable Division's review of any rate forms in future filings.

IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes, regulations, and precedent, Cox's FCC Form 1240 as filed on May 1, 2002, for the Town of Holland.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Cox's FCC Form 1205 as filed on May 1, 2002, for the Town of Holland.

The attached schedule provides Cox's previous and current actual rates, as well as its proposed and approved maximum permitted rates.

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.