COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY
Cable Television Division

CTV 03-1

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240 and 1205 filed by Comcast Cable Communications, Inc.

APPEARANCES: Peter Feinberg, Esq.
Comcast Cable Communications, Inc.
1500 Market Street - 32nd Floor
Philadelphia, PA 19102-2148
FOR: COMCAST CABLE COMMUNICATIONS, INC.
Petitioner

William H. Solomon, Esq.
319 Main Street
Stoneham, MA 02180
FOR: THE TOWNS OF ACTON AND STONEHAM
Intervenors

John Cox, City Manager
Jack Hall, Cable TV Coordinator
David Fenton, Assistant City Solicitor
City of Lowell
375 Merrimack Street
Lowell, MA 01852
FOR: THE CITY OF LOWELL
Intervenor

William H. Solomon, Esq.
319 Main Street
Stoneham, MA 02180

-and-

David J. Marciello, Esq.
Executive Secretary
Town of Rehoboth
148R Peck Street
Rehoboth, MA 02769

FOR: THE TOWN OF REHOBOTH
Intervenor

John Clorite
Chairman
Somerset Cable Advisory Committee
145 Windward Drive
Somerset, MA 02726

FOR: THE TOWN OF SOMERSET
Intervenor

James G. Silva, Selectman
Board of Selectmen
55 Main Street
Westford, MA 01886

FOR: THE TOWN OF WESTFORD
Intervenor

ORDER ACCEPTING COMPLIANCE FILING

I. INTRODUCTION

On December 23, 2003, the Cable Television Division ("Cable Division") of the Department of Telecommunications and Energy issued a rate order concerning Comcast Cable Communications, Inc.'s ("Comcast" or "the Company") basic service tier ("BST") programming and equipment rates for its Massachusetts regulated communities. Comcast Cable Communications, Inc., CTV 03-1 (2003) ("Order"). In the Order, we directed Comcast to reduce the franchise related costs ("FRC") reported on the current North Attleborough Federal Communications Commission ("FCC") Form 1240 by the amount of any FRCs that had been embedded in the BST rate as of the starting date of regulation, November 10, 1993. Order at 11. We permitted Comcast to pass through to North Attleborough subscribers only the increase in FRCs above those embedded costs. Id. We further directed Comcast to refile its FCC Form 1240 for North Attleborough in compliance with the Order. Id. at 12, 28. On January 29, 2004, Comcast submitted a revised FCC Form 1240 for North Attleborough ("Compliance Filing"). Subsequently, we directed the Company to provide an additional explanation of adjustments made to the form's FRC Worksheet, to which Comcast replied on February 13, 2004 (RR-CTV-17).

II. ANALYSIS AND FINDINGS

At the onset of rate regulation, the FCC anticipated that cable operators would unbundle external costs from the BST rate and adjust them thereafter on the basis of actual changes only. 47 C.F.R. § 76.922(f)(4). In a number of instances, however, cable operators began the process of separately identifying FRCs only after they had executed a post-regulation renewal license. In North Attleborough, FRCs have not yet been unbundled from the BST rate and, therefore, those costs are considered embedded in the current rate. Order at 9; citing 47 C.F.R. § 76.922(f)(4); 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, at 5792, ¶ 257 (1993) ("Rate Order").

In our Order, we found that with a term of 15 years, the 1981 North Attleborough license was in effect on November 10, 1993, the date rate regulation began in North Attleborough. Order at 10; North Attleborough Cable License at § 5(a) (June 9, 1981) ("1981 License"). Therefore, the costs the cable operator incurred to satisfy the requirements of the 1981 License must be identified to determine the FRCs that were included in the rate as of November 10, 1993. The 1981 License required the cable operator to construct, equip, operate, and staff a public, educational, and governmental ("PEG") access studio, and also to build and maintain an Institutional Network ("I-Net"). Order at 8; citing 1981 License, at §§ 18, 19, 22, 25, 26. We address these costs below.

A. Capital Costs

Under the 1981 License, the Town received $220,000 in capital costs for a studio and mobile production unit, as well as a $160,000 commitment to purchase additional equipment. 1981 License at § 25; see also Compliance Filing; RR-CTV-17. Under the current three-year renewal license, the Company has agreed to provide the Town with a $180,000 capital payment. North Attleborough Cable Renewal License, at § 6.5 (December 10, 2001) ("2001 License"). To determine what portion of the current capital obligation is embedded in the rate, the Company assumed that for regulatory purposes the capital contributions under the 1981 License were amortized over the life of the license. By dividing the total capital commitment of $380,000 by 15 years, the Company determined an annualized capital cost amount of approximately $25,333 per year (RR-CTV-17). The Company then multiplied the annual capital cost amount by the term of the 2001 License, three years, to calculate the embedded costs of $76,000 (RR-CTV-17). The Company then reduced the capital costs of the $180,000 under the 2001 License by the $76,000 of embedded costs to determine the incremental costs under the 2001 License (id.). Using this calculation, the Company determined these incremental costs to be $104,000, or $0.38 per subscriber per month (id.; Compliance Filing at Revised FRC Worksheet).

Although the 1981 License indicated the amount of the capital obligations, it was silent about the allocation of these costs over the term of the license. A cable operator may treat, for regulatory purposes, capital costs in one of two ways. The first approach, which this Company has employed in preparing its renewal FRC calculations for its FCC Forms 1240 for all regulated Massachusetts communities, is to treat all capital costs as having been paid out at the beginning of the license and recovered over the life of the license. Alternatively, a cable operator may identify each cost and its expected life (depreciable assets versus capital grants) annually in order to determine a specific pass-through amount for each year. For the latter, a detailed accounting of all costs is required. For an operator such as Comcast, with over 200 communities in Massachusetts alone, tracking licenses in this way would be administratively burdensome and provide no appreciable benefit to subscribers. With respect to the former approach, the Cable Division has previously approved BST maximum permitted rates ("MPR") calculated by this method in AT&T Broadband, CTV 01-1/01-3 (2002) and AT&T Broadband, CTV 02-2 (2003). We found the method reasonable in that it established a specific FRC to be applied for the duration of the license, thus contributing to rate stability for subscribers. Similarly, Comcast's proposal provides an element of rate stability over the course of the current license. Thus, the Cable Division finds the method employed by Comcast in this case to be reasonable. We conclude that the Company may recover $104,000, or $0.38 per subscriber per month, as incremental capital costs.

B. Studio Operating Costs

The 1981 License required the cable operator to incur non-capital costs in the operation of a PEG access studio. 1981 License at §§ 19, 22, 26. The license required specific types of expenditures in support of PEG access, but did not assign them dollar amounts. Id.. Thus, the Company could not reference a specific license provision to establish the amount of operating expenses at the onset of regulation. Clearly, the best indicator of what the North Attleborough studio costs were in 1993 is the actual expense figure for that year. However, Comcast claimed it was able to determine the actual studio costs only as of 1998 (Compliance Filing). For costs incurred between 1993 and 1998, Comcast used the FCC's annual inflation factor to approximate the studio's operating costs during that time (id.). It appears that Comcast identified the earliest known actual cost figure from 1998, and reduced it by each year's inflation factor to determine the studio costs on November 10, 1993. As a result, Comcast estimated that on November 10, 1993, the studio's annual operating costs were $123,051 (id.).[1] Since the current renewal license caps operating expenses for the studio at $122,000, an amount less than the estimated costs in 1993, the Company considered all such costs embedded and included no current operating costs in the amount to be passed through to subscribers. 2001 License at § 6.2; Compliance Filing at Revised FRC Worksheet.

Comcast provided no explanation of its alleged inability to identify actual operating costs for the relevant time period. The Company did not describe what efforts, if any, it pursued in order to obtain records and other information concerning the operating costs of the studio, either from the cable operators that had owned the studio before 1999, or from previous employees. While we expect a cable operator to use its best efforts to obtain supporting documentation, we recognize the that since this franchise has been transferred several times, those efforts may have proved futile.[2] In the absence of reliable actual figures, a cable operator may use a reasonable method to estimate what its studio costs were at the inception of regulation.

---

[1] On the original FCC Form 1240 filed for North Attleborough, Comcast claimed $95,391 in studio costs; the Town's portion of the costs for a studio shared with the Town of Plainville. Subsequent to our Order, the Town of Plainville decided to continue its studio arrangement with the Town of Franklin, and is negotiating a renewal license accordingly.

[2] North Attleborough's initial cable television license was granted to UA-Columbia Cablevision of Massachusetts, Inc. Thereafter, the North Attleborough cable license was subject to a series of transfers and acquisitions and held by Tele-Communications, Inc., Cox Com, Inc., MediaOne, AT&T Broadband, and then Comcast Cable Communications, Inc., the present license holder.

Comcast's method of estimating operating costs assumes that no significant changes have occurred in its license obligations between November 10, 1993 and 1998, the first year for which the Company has actual studio costs. If the cable operator's financial obligations with respect to studio operations varied during that time, the assumption that studio costs increased at the same rate as inflation would not be reasonable. North Attleborough first renewed its cable license in 1996. North Attleborough Cable License (June 10, 1996) ("1996 License"). A comparison of the provisions of the 1981 License and the 1996 License demonstrates that the cable operator's obligations to support the studio remained consistent. Compare 1981 License at §§ 19, 22, 26, with 1996 License at §§ 6.1-6.4, 6.7. Thus, Comcast is reasonable in assuming that its studio costs in 1993 and 1998 were comparable.

To adjust its 1998 costs to 1993 values, Comcast applied the FCC's inflation factors (Compliance Filing). The FCC regulatory process allows for annual inflationary increases in order to reflect general changes in the cost of doing business. Rate Order at 5779-5784, ¶¶ 233-240. These general changes include such costs as wages, rent and supplies, that are not defined as external costs under the FCC's rate regulations. To determine the inflationary adjustment, the FCC adopted the Gross National Product Price Index, as published by the Bureau of Economic Analysis of the United States Department of Commerce. Id. at 5783, ¶ 239; see, e.g., Inflation Adjustment Figures for Cable Operators Using FCC Forms 1210 and 1240 Now Available, DA 98-1974 (1998); Instructions to FCC Form 1240, at 13-14. We find that in the case of North Attleborough, with no significant change in the cable operator's obligations over the intervening period, the use of the FCC inflation factor to reduce the earliest known actual studio cost figure to the 1993 estimate is a reasonable approach. Although an actual cost figure from 1993 would be preferable, the use of inflation factors computes an amount that is derived from an actual number, the last known annual studio cost amount, by the use of independently determined numbers that are available to the public and are not additional estimates or data supplied by the Company. The Cable Division accepts Comcast's estimate of $123,051 for its annual embedded studio costs in North Attleborough as reasonable and appropriate.

However, the embedded studio costs exceed the cap provided for in the current license by $1,051, a difference of approximately $0.01 per subscriber per month. The FCC's regulations provide that a cable operator must adjust its rates to reflect decreases in external costs. 47 C.F.R. §§ 76.922(e)(2)(ii)(B); 76.922(f)(4). Because this difference is based on estimated costs and does not affect Comcast's actual rate charged to North Attleborough subscribers,[3] we do not require an amended FCC Form 1240 at this time. Nevertheless, we expect the Company to make the appropriate adjustments on the FCC Form 1240 next filed for North Attleborough.

---

[3] The Company's proposed MPR is $17.58, $4.84 over its selected rate of $12.74.

C. I-Net Maintenance Costs

In its original filing for North Attleborough, Comcast proposed an I-Net maintenance amount of $14,672 for its 15 miles of I-Net in North Attleborough, equivalent to $978.10 per mile per year (Exh. Comcast-115, FRC Worksheet). In its Compliance Filing, the Company proposed to reduce the I-Net maintenance costs that it seeks to pass through to subscribers by an embedded portion of $815.98 per mile per year (Compliance Filing at Revised FRC Worksheet). The Company therefore proposed to pass through to subscribers $162.12 in incremental I-Net maintenance costs (id.). In support, Comcast merely stated that $815.98 is the amount it has used in other communities where it has calculated embedded I-Net maintenance costs (Compliance Filing).

In MediaOne of Massachusetts, Inc. d/b/a AT&T Broadband, CTV 00-1, at 6 (2000), the Cable Division approved a proposal to include an I-Net maintenance fee of $162.12 in the Town of North Reading. The cable operator had argued that this amount reflected the difference between the cost of maintaining the North Reading's hybrid fiber coaxial I-Net under the current license, $978.10, and the cost of maintaining this I-Net under the previous license, $815.98, i.e. the amount embedded in the rate. Id., citing Exh. CTV-3. Subsequently, the Cable Division approved several FCC Forms 1240 that reflected total maintenance costs for a hybrid fiber coaxial I-Net of $978.10, or post-renewal incremental costs of $162.12. AT&T Broadband, CTV 01-1/01-3 (2002); AT&T Broadband, CTV 02-2 (2003).

In the current proceeding, Comcast proposed and the Cable Division approved FRCs for 37 communities which included prior I-Net maintenance costs of $815.98 per mile per year.[4] Order at 26-27. The Company and its immediate predecessors have consistently claimed, and the Cable Division has accepted, that the pre-renewal costs of maintaining a hybrid fiber coaxial I-Net is $815.98, while the post-renewal cost is $978.10. The Cable Division finds that Comcast's use of $815.98 per mile per year for its embedded I-Net costs and $162.12 per mile per year for its incremental I-Net costs in this instance is reasonable and appropriate.

---

[4] The communities are Agawam, Avon, Beverly, Brockton, Cambridge, Cohasset, East Bridgewater, Easton, Hamilton, Hanover, Hingham, Hull, Ipswich, Lawrence, Marblehead, Marion, Mattapoisett, Methuen, Middleborough, Milford and Upton (combined filing), Milton, Norwell, Raynham, South Hadley, Southwick, Springfield, Stoneham, Waltham, Wareham, Wayland, Wellesley, Wenham, West Bridgewater, West Springfield, Weston and Wilmington (Exhs. Comcast-3, -8, -16, -23, -27, -35, -44, -46, -62, -63, -69, -76, -78, -81, -90, -91, -93, -100, -101, -103, -105, -120, -131, -145, -146, -147, -148, -165, -167, -170, -171, -173, -174, -176, -180, -185, at FRC Worksheet).

III. CONCLUSION

Based on the above findings, we conclude that Comcast has identified those FRCs that are embedded in the BST rate for North Attleborough. The embedded FRCs total $160,620 per year, or $1.52 per sub per month.[5] The resulting adjustments decrease the BST MPR on the FCC Form 1240 from $20.30 to $17.58[6] (Compliance Filing at 4; Exh. Comcast-115, at 4). These adjustments have no effect on the actual BST rate Comcast implemented in North Attleborough on January 1, 2004. However, the Company must enter $17.58 as its current BST MPR on its next FCC Form 1240 filing for North Attleborough.

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Comcast's FCC Form 1240 as submitted on January 29, 2004 for North Attleborough.

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

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

Issued: March 19, 2004

---

5 The monthly embedded FRC is comprised of $.24 per subscriber in capital costs, $1.16 per subscriber in operating costs, and $.12 per subscriber in I-Net maintenance costs.

6 The decrease of $2.72 is comprised of a reduction in the Line I4 projected period rate of $1.52, which were embedded FRCs, a resulting decrease of $1.47 in the Line I8 true-up, and a Line I5 inflationary increase of $.05, as well as a $.22 increase in the non-embedded FRCs to reflect a full, rather than partial, share of studio costs.