

**Before the  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE  
Commonwealth of Massachusetts**

In the Matter of:

Comcast Cable Communications, Inc.

Docket No. D.T.C. 07-6

Dated Issued: November 17, 2008

For Determination of Cable Rates

**PETITION FOR PARTIAL RECONSIDERATION**

Comcast Cable Communications, Inc., on behalf of its affiliates and subsidiaries (“Comcast” or the “Company”), hereby seeks partial reconsideration of the Rate Order, adopted by the Department of Telecommunications and Cable (the “Department”) on November 17, 2008. Comcast is expressly limiting this Petition to the Department’s treatment of the franchise-related costs (“FRCs”) reported for Medway. The Company respectfully submits that the Department overstepped its jurisdictional authority in this one aspect of the Order by requiring a refund extending well beyond the well-established one-year limit. Under the circumstances, Comcast is compelled to contest the temporal scope of the Department-mandated refund. At the same time, Comcast is prepared to voluntarily “true-up” its earlier error through the Form 1240 calculation, thereby reducing the “maximum permitted rate” (“MPR”) now applicable to Medway customers. In this way, the rate form error would be remedied without the Department itself violating FCC regulations.

The Company does not dispute that that its prior rate filings for Medway mistakenly included an FRC for a local Access studio coordinator. Indeed, Comcast acknowledges that the studio coordinator position was eliminated in 1998 in connection with the franchise renewal, and

it concedes that the associated FRC costs should have been removed at that time. (Upon discovering the issue, Comcast itself removed the studio coordinator costs from the Form 1240 that is the subject of the contested Order.)

The problem with the Department's Order is not its substantive treatment of the Medway FRCs, but its assertion that the treatment should apply retroactively to 1998. The resulting refund order is irreconcilable with controlling FCC rules and the regulatory certainty and stability those rules were designed to provide.

First, Section 76.942(g) of the FCC rules establishes a strict limit on the temporal scope of rate refunds. It plainly states, "An operator's liability for refunds is limited to a one-year period." 47 C.F.R. § 76.942(g). The FCC has, in fact, rejected local rate orders that violate this simple rule. *See, e.g., Community TV Corporation (Alton, New Hampshire)*, 10 FCC Rcd 357 (1995)(overturning a 14 month refund order). Accordingly, the Department should reconsider its Order and limit the scope of the mandated refund to a 12 month period.<sup>1</sup>

Second, the rate refund limit set forth in Section 76.942(g) is bolstered in this case by the strict time limit imposed on local rate review under Section 76.933(g) of the FCC rules. This rule provides that "the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing." 47 C.F.R. §76.933(g)(2). The FCC adopted this rule "because operators need to have certainty with respect to their liability for refunds." *Thirteenth*

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<sup>1</sup> Comcast does not believe any refund is appropriate in this case, but would not contest a refund reduced to a 12 month period.

*Order on Reconsideration*, 11 FCC Rcd. 388 at ¶ 92 (1995). The Order clearly violates the letter and spirit of this closure rule by effectively reopening rate filings made throughout the past decade.<sup>2</sup>

Comcast appreciates that the Department was previously unaware of the factual error in the Company's Medway filing. The mistake, however, was inadvertent on Comcast's part, and Medway itself could have raised the issue in the intervening decade of rate review. Not only does the Order, as currently drafted, violate the FCC's well-reasoned "statute of limitations" on cable rate matters, it also produces an inequitable result. Comcast's basic service rate in Medway today is well below the applicable MPR. **In fact, Comcast's FRC reporting error did not result in the Company collecting more money from Medway customers over the last decade than it was legally entitled.** Even if the FRC error had been removed from the MPR calculation in 1998, the resulting MPRs, in aggregate, still would have exceeded the Operator Selected Rates. Comcast should not be penalized for a rate form error that did not inflate the actual rates Medway customers paid for cable service. Yet that is exactly what the current Order requires.

In its Response to the Department's Record Requests at the June 24, 2008 Hearing, Comcast committed to voluntarily recalculate its MPR as a means of resolving the current controversy. The Company explained:

Comcast is prepared in the future to lower the local MPR by an amount necessary to offset amounts previously collected for the studio coordinator position.  
(Comcast would consider doing so even though this approach would encompass a

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<sup>2</sup> To be clear, Comcast is *not* objecting to the Department taking advantage of the brief extension the parties mutually agreed to for issuing this year's rate decision. Comcast's objection arises from the Department reopening prior rate periods.

period far predating the current rate review and ordinary refund limitations.)  
[Comcast Response to Record Request 2.]

Although the Order does not address this voluntary offer, Comcast respectfully submits that it provides the ideal means of quickly resolving this matter. A 12 month refund, coupled with Comcast's voluntary rate form true-up for earlier periods, would enable the Department to fulfill its regulatory mission while respecting critical jurisdictional restraints.

For the foregoing reasons, Comcast asks the Department to reconsider the November 17<sup>th</sup> Order and conform the mandated refund period to the one-year limit established by the FCC.

Respectfully submitted,

**Comcast Cable Communications, Inc.**

By: \_\_\_\_\_

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November 25, 2008

**CERTIFICATE OF SERVICE**

I, Nichele Rice, hereby certify that a true and correct copy of the foregoing  
Petition for Partial Reconsideration was sent via U.S. Mail (and e-mail where indicated)  
to the following parties on November 25, 2008. An additional copy was sent via  
Overnight Mail to Catrice C. Williams, Secretary.

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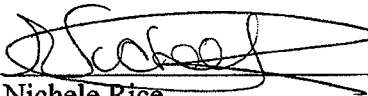
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**Before the  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE  
Commonwealth of Massachusetts**

In the Matter of:

Docket No. DTC 07-6  
Date Issued: November 17, 2008

Comcast Cable Communications, Inc.  
to Establish Cable Rates

**TOWN OF MEDWAY OPPOSITION TO COMCAST'S  
PETITION FOR PARTIAL RECONSIDERATION**

The Board of Selectmen of the Town of Medway (the "Town") hereby files this opposition to the Petition for Partial Reconsideration (the "Petition") by Comcast Cable Communications, Inc. ("Comcast"), dated November 25, 2008.

The Board of Selectmen filed a Petition to Intervene with the Department of Telecommunications and Cable ("DTC"), in DTC 07-6, on February 21, 2008. The Selectmen intervened specifically because of its belief that Comcast had overcharged its Medway subscribers for a Comcast personnel position that had been eliminated by Comcast or its predecessors over ten years ago. The Selectmen discovered Comcast's overcharges in 2007. The Selectmen promptly discussed the overcharges with Comcast in an attempt to have those overcharges used to directly benefit Medway subscribers (who paid the overcharges over nine years). Despite the parties discussing this matter in great detail over several months, the Board of Selectmen and Comcast were unable to agree on how such overcharges would or could be used for the benefit of Medway cable subscribers. The overcharges, totaling \$135,000.00, then became an issue in Comcast's rate filings in DTC 07-6.

In its Rate Order, dated November 17, 2008, the DTC found that "Comcast simply collected monies from Medway subscribers and never disbursed the monies back to the community", and that "...Comcast must return the overcharges, with interest, to Medway subscribers". Accordingly, the DTC ordered Comcast "...to provide a calculation showing the total amount due to subscribers, including principal and interest, for the period of the overcharge." See Rate Order, p.7.

Despite the DTC's clear findings and Order, and Comcast's own admissions of overcharges, in its Petition, Comcast brazenly refuses to refund the \$135,000.00 that it overcharged its Medway subscribers over nine (9) years, relying on a "temporal" technicality. And despite unlawfully collecting \$135,000.00 from its Medway subscribers, Comcast goes so far as to assert, in a footnote in its Petition, that it "...does not believe any refund is appropriate in this case". See Petition, p. 2.

The Board of Selectmen is firmly opposed to Comcast's proposal in its Petition for several reasons, and urges the DTC to reject it and enforce its November 17, 2008 refund Order.

First, Comcast readily admits in its Petition that it overcharged its Medway subscribers for a non-existent position for nine (9) years. Refunding the overcharges, with interest, to the subscribers who paid is the only fair and equitable solution.

Second, Comcast proposes that it would "remedy" its \$135,000.00 in overcharges to Medway subscribers by reducing the maximum permitted rate ("MPR") that is now applicable to Medway subscribers "...by an amount necessary to offset amounts previously collected for the studio coordinator position". It appears, however, that Comcast is also suggesting that it would do true-ups "*for earlier periods*" in order to "reach" these so-called "offset amounts". See Petition, p. 4. The Selectmen do not believe that this proposal is in any manner an adequate or meaningful remedy. The MPR is just that: a *maximum* rate. While Comcast is entitled to charge that rate (once established), it is not required to do so and, in fact, has not done so for many years in Medway (and many other communities in Massachusetts), choosing instead to charge a lesser rate. To now offer to lower the MPR in Medway to somehow reimburse its Medway subscribers for 9 years of overcharges appears to be a meaningless and cynical gesture on Comcast's part. It is little more than an after-the-fact fiction crafted by Comcast to justify its own unlawful charges. It is not an adequate or fair remedy to Comcast's overcharges. The Board of Selectmen urges the DTC to reject this proposal.

Third, Comcast asserts that its "...FRC reporting error did not result in the Company collecting more money from Medway customers over the last decade than it was legally entitled". See Petition, p. 3. Comcast is clearly contradicting its own testimony that it collected monies for a non-existent position. Comcast clearly overcharged its Medway subscribers for 9 years. Comcast set its own Basic Service rates for the past 9 years, below the MPR. It is again

cynical and disingenuous to now suggest that Comcast really did not overcharge its Medway subscribers because it *could have* charged a higher rate over those 9 years. The DTC should not be swayed by such a self-serving and cynical suggestion. The facts are the facts. Comcast *did* overcharge its Medway subscribers by \$135,000.00 for nine (9) consecutive years until the Board of Selectmen raised the issue. And, Comcast chose *not* to charge the MPR for many, if not all, of those 9 years. The DTC should not allow Comcast to use such an after-the-fact justification in order to keep its \$135,000.00 in unlawful overcharges to Medway subscribers.

For the reasons outlined above, the Board of Selectmen requests that the DTC reject Comcast's Petition for Partial Reconsideration and, instead, enforce its Rate Order that Comcast must return the \$135,000.00 in overcharges to Medway subscribers, with interest.

Respectfully Submitted,

The Medway Board of Selectmen

By: \_\_\_\_\_

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December 12, 2008

## CERTIFICATE OF SERVICE

I, Peter J. Epstein, hereby certifies that a true and correct copy of the foregoing Town of Medway Opposition to Comcast's Petition for Partial Reconsideration was sent by U.S. Mail to the following parties on December 12, 2008.

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