

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revisions to Cable Television Rate Regulations)	MB Docket No. 02-144
)	
Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation)	MM Docket No. 92-266
)	
Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation)	MM Docket No. 93-215
)	
Adoption of a Uniform Accounting System for the Provision of Regulated Cable Service)	CS Docket No. 94-28
)	
Cable Pricing Flexibility)	CS Docket No. 96-157

RE: NOTICE OF PROPOSED RULEMAKING AND ORDER

REPLY COMMENTS OF THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION

The Cable Television Division (“Cable Division”) of the Massachusetts Department of Telecommunications and Energy, as the administrative agency charged with regulating the cable television industry in the Commonwealth pursuant to Massachusetts General Laws, chapter 166A, hereby submits reply comments with respect to the Federal Communications Commission’s (the “Commission”) Notice of Proposed Rulemaking and Order (“NPRM”). Our initial comments appropriately addressed many of the issues important to Massachusetts subscribers. We take this further opportunity to highlight our concern relative to the issue of the appropriate rate of interest to be used on the Form 1240.

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The National Cable & Telecommunications Association (“NCTA”) notes that the 11.25% interest rate currently in effect was initially determined to be the operator’s cost of capital, and that since such cost continues to be at a similar rate, the 11.25% is still appropriate. NCTA Comments at 18-19; see NPRM at ¶¶ 38 and 39. The Commission first set forth 11.25% as the appropriate rate of return on capital investments in order to “provide cable operators the opportunity to earn ‘a reasonable profit’ while ‘protecting subscribers ... from rates ... that exceed what would be charged ... if such cable system were subject to effective competition.’” 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, FCC 94-39, 9 FCC Rcd 4527 at 4633-4, ¶ 204 (1994); see also Form 1205 Instructions at Schedule A, Line F. This rate is applied to Schedule A and Schedule C capital costs from the Form 1205 equipment filings, as well as the rate of return for capital assets on the Form 1220 cost of service form.

With the implementation of the true-up mechanism on the annual filing, the Commission noted that “because we have already determined that 11.25% is presumptively the cable operators’ cost of capital, we find that the interest rate presumptively should be 11.25%.” Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, FCC 95-397, 11 FCC Rcd 388 at 424, ¶ 80 (1995). As such, the Commission set forth 11.25% as the appropriate rate to be used in the true-up mechanism on the annual filing. The Cable Division suggests that this presumption be revisited given that the purpose of the true-up mechanism is to reconcile projected costs with actual costs, i.e., what the operator could have charged with what it actually charged. The reconciliation in no way accounts for capital investments, and

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therefore applying a rate presumably tied to the cost of capital is not appropriate. Rather, since the reconciliation corrects for over or under charges, the more appropriate interest rate would be the rate applied to other subscriber overcharges, i.e., the Internal Revenue Service (“IRS”) rate defined at 47 C.F.R. § 76.942(e).

We maintain that operators should be made whole for any under-recovered revenues incurred due to inaccurate projections. However, we also maintain that the true-up mechanism with its very favorable 11.25% interest rate may provide operators with an incentive to underestimate projected costs in order to earn that favorable return. The burden on subscribers is compounded where these operators, for business reasons, elect to implement a rate that is less than the maximum permitted rate, causing these costs to be subject to true-up and interest again. Standardizing the rate to be used in both true-up and refund situations will diminish the incentive operators currently have to underestimate costs in order to garner a significantly higher rate of return than is currently available in any monetary instrument. Our proposal to apply the IRS applicable rate in all instances of true-up and refund appropriately balances the interests of operators and subscribers.

We appreciate the opportunity to comment on this matter of great importance.

Respectfully submitted,

/s/ Alicia C. Matthews

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Director, Cable Television Division

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