

## CABLE RATE REGULATION BY MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

*Prepared for the 2016 Massachusetts Municipal Association Annual Meeting*

In December 2015, the Massachusetts Department of Telecommunications and Cable (“DTC”) wrote all Massachusetts cable license issuing authorities concerning changes in the Federal Communications Commission’s rate regulation orders. A new FCC order reversed the longstanding presumption that cable companies are not subject to effective competition. This change created a rebuttable presumption that effective competition exists in all cable television markets. DTC explained that the FCC order required any “franchising authority” wishing to retain rate regulating powers to file a new certification rebutting the presumption of effective competition. The letter indicated further that DTC, as the “certified franchising authority,” had filed with the FCC the required forms for “communities for which sufficient data exist to rebut the presumptions of effective competition.”

The DTC letter may have created a certain level of confusion. First, it equated, without explanation, the term “issuing authority,” defined in G.L. c.166, §1 as a municipal executive, with the term “franchising authority.” The term “franchising authority” is defined in the federal cable statute, 47 USC, §522 (10), as a government body empowered to grant a “franchise” or cable license. Thus, the letter was somewhat unclear that although the DTC is the FCC certified “franchising authority” for Massachusetts cable licenses, the authority to grant licenses has been delegated by state statute to municipal executives serving at the local level as “issuing authorities.”

Secondly, the DTC letter does not specifically define the FCC term “effective competition.” However, a municipality is considered to have effective competition if a competing cable provider, including satellite, has captured at least 15% of the local market. Under such circumstances, the DTC will no longer regulate basic tier cable rates. In Massachusetts communities with two or more cable operators (in most cases, Verizon or RCN), the second cable operator usually has succeeded in capturing the requisite 15% market share, thereby meeting the requirements for “effective competition.”

In summary, therefore, the DTC letter stands for the following. The DTC has filed with the FCC, on behalf of those communities that do not have “effective competition,” i.e., those that have only a single provider, the forms required to preserve the right to continue to regulate basic service rates, at least until such time as “effective competition” is achieved. For those communities where there is “effective competition,” the DTC will no longer regulate basic service rates, and the rates will be determined instead by competition in the market.

A copy of the DTC letter accompanies this memorandum.

If you have any questions regarding the DTC letter or other cable television topics, please contact Attorney William Hewig by e-mail at [whewig@k-plaw.com](mailto:whewig@k-plaw.com) or by phone at 617.556.0007.

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# COMMONWEALTH OF MASSACHUSETTS

## Department of Telecommunications and Cable

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COMMISSIONER

December 8, 2015

RE: Cable Rate Regulation

Dear Issuing Authority:

The Federal Communications Commission ("FCC") recently adopted an Order affecting the regulation of basic service tier cable rates in Massachusetts communities.<sup>1</sup> Specifically, the FCC reversed the longstanding presumption that cable companies are not subject to effective competition, creating instead a rebuttable presumption that cable companies *are* subject to effective competition.<sup>2</sup> When a cable company is deemed subject to effective competition in a community, basic service tier cable rates in that community are no longer subject to rate regulation.

Under the new FCC rule, a franchising authority that wishes to retain its cable rate regulation authority must file a new certification ("FCC Form 328") with an attachment rebutting the presumption of effective competition by December 8, 2015. The Department of Telecommunications and Cable ("Department") is the certified franchising authority for regulating basic service tier rates and associated equipment costs in Massachusetts communities. As such, the Department has filed the attached FCC Form 328 for communities for which sufficient data exist to rebut the presumption of effective competition. The Department's attachment to the FCC Form 328 can be viewed here: <http://apps.fcc.gov/ecfs/proceeding/view?name=INBOX-76.910>.

If you have any questions regarding this filing, please feel free to contact the Department.

Sincerely,

Sara Clark  
Secretary of the Department  
1000 Washington Street, Suite 820  
Boston, MA 02118-6500  
(617) 305-3580

<sup>1</sup> The FCC's Order can be found here: [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-62A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-62A1.pdf).

<sup>2</sup> More information on effective competition can be found on the Department's website: <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/statistics-and-general-info/effective-competition.html>.



For FCC Use Only

**FCC 328**

**CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION**

1. Name of Franchising Authority <b>MA Dep't of Telecommunications and Cable</b>		
Mailing Address <b>1000 Washington Street, Suite 820</b>		
City <b>Boston</b>	State <b>MA</b>	ZIP Code <b>02118-6500</b>
Telephone No. (include area code). <b>(617) 305-3580</b>		
Person to contact with respect to this form: <b>Sean Carroll</b>		

2a. Name(s) and address(es) of cable system(s) and associated FCC Community unit identifier(s) within your jurisdiction (Attach additional sheets if necessary)

Cable System's Name <b>See Attachment 1</b>		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		
Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

2b. Name(s) of system(s) and associated community unit identifier(s) you claim are subject to regulation and with respect to which you are filing this certification (Attach additional sheets if necessary.)

Name of System <b>See Attachment 2</b>
Name of System

2c. Have you served a copy of this form on  Yes  No all parties listed in Item 2?

3. Will your franchising authority adopt (within 120 days of certification) and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. Section 543(b)?  Yes  No

4. With respect to the franchising authority's regulations referred to in question 3.

a. Does your franchising authority have the legal authority to adopt them?  Yes  No

b. Does your franchising authority have the personnel to administer them?  Yes  No

5. Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties?  Yes  No

6a. The Commission presumes that the cable system(s) listed in 2b is (are) subject to competing provider effective competition. Based on definition (b) below, do you have reason to believe that this presumption is incorrect? If so, you must provide an attachment containing evidence adequate to satisfy your burden of rebutting the presumption with specific evidence.  Yes  No

6b. The Commission presumes that the cable system(s) listed in 2b is (are) not subject to any other type of effective competition. Based on definitions (a), (c), and (d) below, do you have reason to believe that this presumption is correct?  Yes  No

(Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system, (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area, and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributors exceeds 15 percent of the households in the franchise area, (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in the franchise area, or (d) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area. 47 C.F.R. § 76.905 )

Signature 
Title Counsel
Date 12/8/15

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM  
ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT  
(U.S. CODE TITLE 18, SECTION 1001).**

Return the original and one copy of this certification form (as indicated in the Instructions for FCC 328), along with any attachments, to

Federal Communications Commission  
Attn: Media Bureau, Policy Division  
FCC Form 328 Cable Franchising Authority Certification  
445 12th Street, SW  
Washington, DC 20554