

MLP Depreciation Reserves

Thank you for your inquiry. The Department of Public Utilities has reviewed your inquiry regarding the role it has to play in overseeing depreciation accounting for municipal light plants (“MLPs”) formed solely for the purpose of operating telecommunication networks constructed for the purpose of delivering broadband service. We have recently been engaged in conversations regarding the same with the Massachusetts Broadband Institute (“MBI”). To the best of our knowledge, there is no established history or practice for state financial oversight of these sorts of entities. The Department itself has never been presented with a depreciation rate filing from such a single purpose MLP, and the Department has no expertise in overseeing these types of entities. Therefore, following our review of what direction the General Laws provide in this area, we have concluded that it would not be appropriate for the Department to review and approve filings from MLPs formed for the sole purpose of operating broadband telecommunication networks.

The Department rests its conclusion on a number of considerations. First, Chapter 164 governs the manufacture and sale of gas and electricity, and thus, for purposes of this chapter, “department” is defined as the Department of Public Utilities. G.L. c. 164, § 1. However, numerous statutes applicable to MLPs are located within Chapter 164 (i.e., G.L. c. 164, §§ 34 69A), despite including provisions for MLP-owned/operated community antenna television (“CATV”) and telecommunications systems. G.L. c. 164, §§ 34, §47E. Pursuant to Chapter 25C, 166 and 166A, the Department of Telecommunications and Cable (“DTC”) has jurisdiction over telephone and telegraph companies, and CATV systems, with certain statutory provisions specifically applicable to those operated/owned by MLPs. See, e.g., G.L. c. 166, § 11 (telecommunications system owned/operated by a MLP under G.L. c. 164, § 47E is required to file its annual returns with the DTC).

As a result, although G.L. c. 164, § 57, charges the Department with approving the use of a depreciation rate different from that established in § 57 for MLPs, we interpret this jurisdiction over depreciation rates to apply only to those MLPs providing gas and electricity, as those are the only entities in Chapter 164 in this context that are jurisdictional to the Department’s oversight. Further, G. L. c. 25C, § 6A, appears to broadly prohibit any agency from issuing any ruling or order, or enforcing any law, that would directly or indirectly have the effect of regulating rates for internet services. The approval by the Department of a depreciation rate for an entity providing broadband pursuant to § 57 would likely have such an effect, and therefore, we would decline to undertake such a proceeding. You may wish to engage in further consideration regarding this issues with the MBI.

Thank you for your attention to this response.

Sincerely,

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It's not really theirs to enforce; it is a statutory requirement per G.L. c. 164, sec. 58, and it's for schedules for prices for gas and electricity, not cable or internet.

When the MLP enters the cable/telecomm business, then those statutes apply to its operations, not the ones regarding electric operations. G.L. c. 164, sec. 47E states that "Wherever apt, the provision of this chapter...which apply to the operation and maintenance of a municipal lighting plant, shall apply also to the operation and maintenance of such telecommunications system." It is not "apt" for a statute regarding schedules of rates for electricity containing certain formulaic structure (including streetlights) to apply to rates for telecommunications services, when those rates are not regulated in the first place by the DPU. It would not make much sense that some of that statute would apply to rates for telecomm services and other provisions within Section 58 would not.

The DPU only gets involved if it makes a determination regarding the statutory rate of return (8%) or someone has some kind of extraordinary loss. Cable and telecomm and Internet rates tend to be market based and have nothing to do with this formula. Why don't I ask how my other client that has cable is handling it. I would suggest you not charge for it now MBI has nothing to do with this at all.

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Just finished a conversation with Joe Tiernan the DTC regulator. Bottom line there is no basis for regulation of internet and VOIP service in the MA law including the 3% reserve rule. Additionally the Department referenced in Chap 164 is only the DPU according to Joe.

Chap 25C sect 6A "Section 6A. (a) For purposes of this section, the following words shall have the following meanings, unless the context clearly requires otherwise:-- "Internet Protocol enabled service" or "IP enabled service", service, capability, functionality, or application provided using Internet Protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet Protocol format or any successor format, regardless of technology; provided, however, that no service included within the definition of "Voice over Internet Protocol service" shall be included within this definition.

"Voiceover internet protocol service" or "VoIP Service", service that: (1) enables real time, 2-way voice communications that originate from or terminate to the user's location in internet protocol or any successor protocol; (2) uses a broadband connection from the user's location; and (3) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

*(b) Except as set forth in subsections (c) to (f), inclusive, and notwithstanding any other general or special law to the contrary, **no department, agency, commission or political subdivision of the commonwealth, shall enact, adopt or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order or other provision having***

the force or effect of law that regulates or has the effect of regulating, the entry, rates, terms or conditions of VoIP Service or IP enabled service.

(c) Subsection (b) shall not be construed to affect the authority of the attorney general to apply and enforce chapter 93A or other consumer protection laws of general applicability.

(d) Subsection (b) shall not be construed to affect, mandate or prohibit the assessment of nondiscriminatory enhanced 911 fees or telecommunications relay service fees.

(e) Subsection (b) shall not be construed to modify or affect the rights or obligations of any carrier under sections 47 USC 251 or 47 USC 252. (this is for the USF fee)

(f) Subsection (b) shall not be construed to affect or modify any obligations for the provision of video service by any party under applicable law.

So while we are not required to maintain a 3% depreciation reserve, good business practice would dictate that each town maintain a depreciation reserve sufficient to replace their electronics every 10 years.

For Shutesbury the total construction cost is project cost \$2,440,000 – Professional services \$360,000 – make ready \$666,450 = \$1,413,550. If half is labor and half is materials the materials is \$706,775. If half of the material cost is fiber and half is electronics then \$353,387 over 10 years is \$35,339 per year divided by 12 is \$2944 per month divided by 328 (40% take rate) subscribers is \$8.97 per subscriber. or 656 (80% take rate) is \$4.48. This is all pure speculation because we won't know the actual cost of electronics until we get bids.

Since the Fiber Plant has a 50+ usable life span it would make sense to start accumulated depreciation reserves for the fiber plant after the debt has been paid.

According to Joe we will have to collect 911 surcharge at \$1.00 per line per month, the USF fee and perhaps sales tax but I need to check with DOR on that. There will be a monthly state 911 filing with the 911 division and an annual 911 filing with the DTC. Additionally each network owner must obtain an FRN (FCC registration Number) and file a form 477 with the FCC twice a year. (<https://www.fcc.gov/general/form-477-resources-filers>)

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