



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-8

October 27, 2014

Petition of Charter Communications to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Charter Communications that are currently subject to rate regulation.

RATE ORDER

APPEARANCES:

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Worcester, MA 01606
FOR: Charter Communications
Petitioner

I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves the petition of Charter Communications (“Charter”) seeking to establish basic service tier (“BST”) maximum permitted rates (“MPR”), and equipment and installation rates for its regulated Massachusetts communities.¹

II. PROCEDURAL HISTORY

On November 1, 2013, Charter filed Federal Communications Commission (“FCC”) Forms 1240 with the Department in which Charter proposed BST MPRs for each of its 19 regulated Massachusetts communities. Contemporaneously, Charter filed a nationwide FCC Form 1205 that proposed equipment and installation MPRs for all of its regulated communities. Pursuant to FCC regulations, Charter’s proposed BST programming, equipment, and installation rates became effective on February 1, 2014. *See* 47 C.F.R. § 76.933(g).

The Department issued its First Set of Information Requests, Order of Notice, and Notice of Public Hearing on March 31, 2014. *Petition of Charter Commc’ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the cmtys. served by Charter Commc’ns that are currently subject to rate regulation*, Docket 13-8 (2014) (“Docket”). On April 18, 2014, Charter filed its response to the First Set of Information Requests. *Id.* The Department held public and evidentiary hearings on May 28, 2014. *Id.* The Department issued its First Set of Record Requests on June 3, 2014. *Id.* Charter submitted its responses to the Record Requests on June 23, 2014. *Id.*

¹ Charter’s 19 regulated communities are: Belchertown, Boylston, Brimfield, Chicopee, East Longmeadow, Easthampton, Hadley, Hampden, Harvard, Holden, Leicester, Ludlow, Northbridge, Paxton, Southampton, Spencer, Sturbridge, West Boylston, and Wilbraham.

The evidentiary record consists of 20 Charter exhibits, six responses to Department Information Requests, the transcripts to the public and evidentiary hearings, and five responses to Department Record Requests.²

III. ANALYSIS AND FINDINGS

After review and consideration, the Department approves Charter's FCC Forms 1240 and FCC Form 1205, subject to the Department's findings below.

A. Review of Charter's FCC Forms 1240

A cable operator must calculate its BST programming rates using specific FCC-created forms incorporating the provisions of its rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. Pursuant to the Form 1240 regulations, the FCC allows a cable operator to update annually its BST programming rates to account for inflation; changes in the number of regulated channels; and changes in external costs, including programming costs, copyright costs, and franchise related costs ("FRC"). *See* 47 C.F.R. § 76.922(e). To adjust the rates on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that its projections are reasonably certain and reasonably quantifiable. *See* 47 C.F.R. §§ 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fees, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRC to the extent they are reasonably certain and reasonably quantifiable, but FRC projections are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

² Citations to Department issued Information Requests and Charter's responses are to "IR 1-1," *et seq.* Citations to the evidentiary transcript are to "Tr. at [page number]." Citations to Department issued Record Requests and Charter's responses are to "RR 1-1," *et seq.*

The standard under which the Department reviews rate adjustments on the FCC Form 1240 is found in the FCC's rate regulations. 47 C.F.R. § 76.922(a). Specifically, the FCC directs local rate regulators such as the Department to ensure that the proposed rates are in compliance with the Communications Act of 1934, as amended ("Communications Act"), and do not exceed the maximum permitted charges calculated by the FCC's rate forms. *Id.* The Department may accept as compliant with the statute, BST programming rates that do not exceed the approved maximum permitted charge as determined by federal regulations. 47 C.F.R. § 76.922(a), (c). In addition, the Department shall approve only those rates that it deems reasonable. 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G.L. c. 166A, §§ 2, 15. The cable operator has the burden of proving that its proposed BST programming rates comply with Section 623 of the Communications Act and implementing regulations. 47 U.S.C. § 543; *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Report & Order & Further Notice of Proposed Rulemaking*, 8 FCC Rcd. 5631, 5716 ¶ 128 (rel. May 3, 1993) ("FCC Rate Order"); 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator). The Department approves Charter's FCC Forms 1240 and finds the proposed rates to be reasonable and in accordance with FCC regulations.

1. Programming costs for Cool TV

As part of its review, the Department inquired into Charter's July 2013 removal of the "Cool TV" channel from its programming costs in ten regulated communities.³ See IR 1-4; Tr. at 9-13; RR 1-2. Cool TV was a multicast broadcast channel associated with WWLP from Springfield MA, which Charter began carrying in October of 2010 pursuant to the FCC's must

³ The communities are: Belchertown, Brimfield, Chicopee, East Longmeadow, Easthampton, Hadley, Hampden, Ludlow, Southampton, and Wilbraham.

carry regulations. IR 1-4. As a result of this addition, Charter was permitted to add \$0.01 to its basic rate. *Id.* “Unfortunately, Cool TV went dark in July 2013, when WWLP terminated its broadcast delivery.” *Id.* Because this termination was entirely out of Charter’s control, Charter accommodated the loss by removing the associated \$0.01 from the basic rate which “effectively restored [local subscribers] to the same position as they would be if WWLP had never broadcast, and Charter had never carried, Cool TV.” *Id.*

The FCC has defined a segment for the deletion of a channel and its effect on rate setting. *See* 47 C.F.R. § 76.922(g)(4). That is, when a channel is deleted, so too are the various operator costs for that channel, and Form 1240 should be updated accordingly. *Id.* However, as Charter points out, “the FCC has not expressly addressed the rate treatment of multicast digital broadcast channels.” IR 1-4. In this instance, a typical channel deletion would result in a reduction of Charter’s MPR greater than the increase of \$0.01 Charter received when it began carrying Cool TV. *Id.* Because Charter was required to begin carrying, and was similarly compelled to stop carrying Cool TV as a result of events outside of its control, the Department is in agreement with Charter’s assertion that requiring a larger reduction in MPR would be unfair. Moreover, such treatment would dissuade operators generally from adding new local broadcast channels in the future. Charter’s treatment of the Cool TV channel deletion simply places Charter in the same position it was in before it began carrying Cool TV. As the removal does not result in a windfall for the operator, nor place an unfair burden on subscribers, the Department approves Charter’s treatment of the deletion of the Cool TV channel.⁴

⁴ The Department notes that on February 19, 2013, Charter began carriage of channel WASA-Estrella pursuant to a contractual agreement extending through 2017. As a result of the channel addition, Charter’s FCC Forms 1240 reflect no change in net channel count. *See* RR 1-1.

2. FCC Form 1240 Rates Approved

The Department approves the FCC Forms 1240 for Charter's 19 regulated Massachusetts communities. The Department finds that Charter's FCC Forms are reasonable and were prepared in accordance with FCC regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15.

B. Review of the FCC Form 1205

In its FCC Form 1205 filing, Charter proposed adjustments to its MPR for equipment and installation according to FCC rate regulations. The Department analyzed Charter's proposed adjustments and accepts its FCC Form 1205 as filed. Charter's BST MPRs and operator selected rates for equipment and installations are in the Rate Schedule included as Attachment 1.

The FCC Form 1205 is used to establish rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equip. & Installation*, at 1, 7, 11-13 (June 1996). A cable operator prepares the FCC Form 1205 on an annual basis using information from its previous fiscal year. *Id.* at 2-3. In this proceeding, Charter's FCC Form 1205 is for the fiscal year ending December 31, 2012. Exh. Charter-1, at 1.

In accordance with the FCC's regulatory requirements, subscriber charges established using FCC Form 1205 may not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2). The equipment regulated using a FCC Form 1205 "consists of all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier." 47 C.F.R. § 76.923(a)(1). Such regulated equipment includes, but is not limited to, converter boxes and remote control units. *Id.* The cable operator has the burden to demonstrate that its proposed rates for equipment and installations comply with § 623 of the Communications Act and its

implementing regulations. 47 U.S.C. § 543; *FCC Rate Order* at 5716, ¶ 128; 47 C.F.R. § 76.937(a).

In its previous Rate Order dated October 7, 2013, the Department expressed concern over Charter's decision to reduce the price of its regulated standard digital remote and receiver ("SDRR"), while increasing the price of the associated interactive guide services ("IGS"). *See Petition of Charter Commc 'ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the comtys. in Mass. served by Charter Commc 'ns that are currently subject to rate regulation*, D.T.C. 12-7, Rate Order (Oct. 7, 2013) ("DTC 12-7"). Specifically, the Department stated that Charter's separation of the rates for SDRR's and IGS may constitute an improper shift of rates from a regulated to an unregulated tier, because no Charter customers took an SDRR without the functionality offered through the IGS. *See DTC 12-7 at 8*; 47 C.F.R. § 76.923(a). This year the Department inquired into Charter's SDRR and IGS rates and notes that the price of IGS has increased again to \$6.99 for basic and expanded basic subscribers. *See RR 1-4*. The Department remains skeptical of Charter's treatment of IGS as separate from SDRR rates, and will continue to assess whether such rate separation complies with Section 623 of the Communications Act and its implementing regulations. *See 47 U.S.C. § 543; FCC Rate Order at 5716, ¶ 128; 47 C.F.R. § 76.937(a)*. For the time being, the Department accepts Charter's FCC Form 1205 for the fiscal year ending December 31, 2012 as filed.

IV. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That Charter's FCC Forms 1240, as filed on November 1, 2013, for the communities of Belchertown, Boylston, Brimfield, Chicopee, East Longmeadow, Easthampton,

Hadley, Hampden, Harvard, Holden, Leicester, Ludlow, Northbridge, Paxton, Southamptton, Spencer, Sturbridge, West Boylston, and Wilbraham are approved; and it is

FURTHER ORDERED: That Charter's FCC Form 1205, as filed on November 1, 2013, is approved.

By Order of the Department



Karen Charles Peterson,
Commissioner



RIGHT OF APPEAL

Pursuant to G. L. c. 25, § 5 and G. L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.