



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

D.T.C. 14-6

October 30, 2015

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.

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RATE ORDER

APPEARANCES:

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FOR: Charter Communications  
Petitioner

## I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves the Maximum Permitted Rates (“MPR”) and Operator Selected Rates (“OSR”) for basic service tier programming proposed by Charter Communications (“Charter”) for its regulated Massachusetts communities.<sup>1</sup> In addition, the Department finds that Charter’s Federal Communications Commission (“FCC”) Form 1205 was not prepared in compliance with the FCC’s rules. The Department thus rejects Charter’s Form 1205 as filed.

## II. PROCEDURAL HISTORY

On October 31, 2014, Charter filed FCC Forms 1240 with the Department in which Charter proposed basic service tier MPRs and OSRs for each of its sixteen regulated Massachusetts communities. *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*, D.T.C. Docket 14-6 (filed Oct. 31, 2014).

Contemporaneously, Charter filed its nationwide FCC Form 1205 that proposed equipment and installation MPRs and OSRs for its regulated communities. Ex. 1. In accordance with FCC rules, Charter’s proposed basic service tier programming, equipment, and installation rates became effective on February 1, 2015. *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 in this proceeding on March 31, 2015. *See* D.T.C. Docket 14-6. On April 17, 2015, Charter filed its responses to the Department’s First Set of Information Requests. *Id.* The Department held public and evidentiary hearings and issued to Charter four Record Requests on May 13, 2015. *Id.* Charter submitted its responses to the Record Requests on June 1, 2015. *Id.*

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<sup>1</sup> Charter’s sixteen regulated communities in Massachusetts are: Belchertown, Brimfield, Chicopee, East Longmeadow, Easthampton, Hadley, Hampden, Harvard, Holden, Ludlow, Paxton, Southamptton, Spencer, Sturbridge, West Boylston, and Wilbraham.

The evidentiary record includes Charter's FCC Form 1205, filed on October 31, 2014 ("Ex. 1"), Charter's FCC Forms 1240, filed on April 17, 2015 ("Exs. 2-17"), Charter's September 17, 2014, letter to subscribers regarding its plans to go "all digital" ("Ex. 18"), Charter's rate card for Massachusetts, filed March 19, 2015 ("Ex. 19"), Charter's proof of cablecasting and publication of the hearing notice, Charter's responses to the Department's seven Information Requests, the transcripts to the public and evidentiary hearings, and Charter's responses to the Department's four Record Requests.<sup>2</sup>

### III. ANALYSIS AND FINDINGS

After review and consideration, the Department approves Charter's FCC Forms 1240 and rejects Charter's FCC Form 1205, subject to the Department's findings below. Charter's approved MPRs and OSRs for basic service tier programming are in the Rate Schedule included as Attachment 1.

#### A. Review of Charter's FCC Forms 1240

A cable operator must calculate its basic service tier programming rates using FCC forms that incorporate the FCC's rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. The FCC allows a cable operator to update annually its basic service tier 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 id.* § 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 id.* § 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fees, other

<sup>2</sup> Citations to Department-issued Information Requests and Charter's responses are to "D.T.C. IR 1-1," *et seq.* Citations to the hearing transcript are to "Tr. at [page number]." Citations to Department-issued Record Requests and Charter's responses are to "RR-1," *et seq.*

programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *See id.* § 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.*

The FCC's rate regulations establish the standard under which the Department must review rate adjustments on the FCC Form 1240. *Id.* § 76.922(a). Specifically, the FCC directs local rate regulators, such as the Department, to ensure that the approved rates comply with the Communications Act of 1934, as amended ("Communications Act"), and to ensure that the rates do not exceed the maximum permitted charges calculated by the FCC's rate forms. *Id.* The Department may accept basic service tier rates that do not exceed the approved maximum permitted charge as determined by federal regulations. *Id.* § 76.922(c). The Department only approves rates it deems reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, §§ 2, 15; 47 C.F.R. § 76.937(d)-(e). A cable operator has the burden to demonstrate that its proposed rates for basic service tier programming comply with Section 623 of the Communications Act, including a demonstration that the proposed rates are reasonable. 47 U.S.C. § 543; *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5716-17, *Report & Order & Further Notice of Proposed Rulemaking* (1993) ("1993 FCC Rate Order"); 47 C.F.R. § 76.937(a), (d).

In addition, the FCC permits cable operators to report projected costs, including costs associated with programming, that they believe are reasonably certain and reasonably quantifiable. *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 11 FCC Rcd 388, 418-19, *Thirteenth Order on*

*Reconsideration* (1995). In particular, the FCC has built into its Form 1240 a true-up mechanism to account for actual costs that vary from those Projected Period estimates.<sup>3</sup>

In its Forms 1240, Charter proposes to increase its MPRs and OSRs for basic service tier programming in each of its regulated Massachusetts communities, with the exception of Hadley, where Charter proposes to decrease its MPR and OSR. *See* Exs. 2-17. In reviewing Charter's initially filed FCC Forms 1240, the Department observed that Charter had inaccurately applied FCC inflation factors in its calculations. *See* D.T.C. IR 1-1, 1-2. At the Department's request, Charter re-filed its Forms 1240 with the correct inflation factors on April 17, 2015. *See* Exs. 2-17. Upon review of Charter's re-filed Forms 1240, the Department finds that, as amended, the Forms 1240 were prepared in accordance with FCC regulations. *See* 47 U.S.C. § 543; G.L. c. 166A, §§ 2, 15; 47 C.F.R. § 76.922(a). The Department also determines that Charter's OSRs are reasonable and do not exceed the MPRs that were established in Charter's Forms 1240. *See* Attachment 1. The Department therefore approves the amended Forms 1240 that Charter submitted on April 17, 2015.

B. Review of the FCC Form 1205

In its FCC Form 1205 for the fiscal year ending December 31, 2013, Charter proposed several adjustments to its MPRs and OSRs for equipment and installation. *See* Ex. 1. The Department analyzed Charter's proposed adjustments as well as its charges as outlined on its 2015 rate card. *See* Ex. 19. The Department determines that Charter's Form 1205 was not

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<sup>3</sup> The true-up segment includes the compensation for overcharges or undercharges which have occurred during the True-Up Periods. The purpose of the true-up process is to compare the revenue a cable operator collected during the True-Up Period with the amount the operator should have been able to collect. If the sum collected is less than what should have been collected, then the operator is allowed to collect the difference during later rate periods. Conversely, if the sum collected exceeds the amount that should have been collected, then the operator must lower its rates in future rate periods to compensate subscribers for the difference. *Instructions for FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services* at 5 (July 1996).

prepared in compliance with federal law. *See* 47 C.F.R. § 76.923. The Department thus rejects Charter Form 1205 as filed and directs Charter to file a refund plan in accordance with this Order. *Id.* § 76.942.

FCC Form 1205 establishes rates for installations and equipment based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equip. & Installation* (July 1996). A cable operator prepares Form 1205 on an annual basis using information from its previous fiscal year. *Id.* Subscriber charges established in a Form 1205 may not exceed charges based on actual costs as determined in accordance with the FCC's regulations. *See* 47 C.F.R. § 76.923(a)(2). The equipment regulated using an 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." *Id.* § 76.923(a)(1). Such regulated equipment includes, but is not limited to, converter boxes and remote control units. *Id.* The cable operator bears the burden of proof to demonstrate that its proposed rates for installations and equipment comply with Section 623 of the Communications Act and the FCC's regulations. *See* 47 U.S.C. § 543; *1993 FCC Rate Order*, 8 FCC Rcd at 5716-17; 47 C.F.R. § 76.937(a). The FCC found that placing the burden on the cable operator is appropriate because the cable operator "possesses the factual information necessary for such a demonstration." *1993 FCC Rate Order*, 8 FCC Rcd at 5716-17. Thus, to meet its burden, the cable operator must provide factual information demonstrating that its rates comply with the Communications Act and FCC regulations. *See id.*; 47 C.F.R. §§ 76.937(a), (d), 76.939. An operator that does not attempt to demonstrate the reasonableness of its rates does not carry this burden. *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation Buy Through Prohibition*, 9 FCC Rcd 4316, 4347, *Third Order on Reconsideration* (1994)

(“*FCC Third Rate Order*”); *see also* 47 C.F.R. § 76.937(d). A franchising authority may find a cable operator that does not attempt to demonstrate the reasonableness of its rates in default and, using the best information available, find the rates to be unreasonable and mandate appropriate relief, including prescribing a reasonable rate and ordering the cable operator to refund subscribers the amount they were overcharged. *In re Time Warner Cable Entm’t – Advance/Newhouse P’ship*, 20 FCC Rcd 12218, 12224, *Memorandum Opinion & Order* (MB 2005) (“*FCC Time Warner Order*”); *FCC Third Rate Order*, 9 FCC Rcd at 4347; 47 C.F.R. §§ 76.937(d), 76.941, 76.942.

Upon receiving an FCC Form 1205, the Department in its role as certified franchising authority must make a determination as to whether the cable operator met its burden, as well as whether the rates are reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. §§ 76.933, 76.937(d); 207 C.M.R. § 6.02. Whenever the Department disapproves a rate, it must issue a written decision to that effect. 47 C.F.R. § 76.936. In this case, the Department finds that Charter has not met its burden of proving that its Form 1205 complies with the FCC’s rules.

#### *1. The Interactive Guide Service*

In previous Rate Orders, the Department expressed concern over Charter’s decision to separate the rates for its standard digital receiver and its associated Interactive Guide Service. *See Petition of Charter Commc’ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the cmtys. in Mass. served by Charter Commc’ns that are currently subject to rate regulation*, D.T.C. 13-8, *Rate Order* at 7 (Oct. 27, 2014) (“D.T.C. 13-8 Rate Order”); *Petition of Charter Commc’ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the cmtys. in Mass. served by Charter Commc’ns that are currently subject to rate regulation*, D.T.C. 12-7, *Rate Order* at 7-8 (Oct. 7, 2013) (“D.T.C. 12-7

Rate Order”). Specifically, the Department withheld determination of the issue, but stated that Charter’s separation of the rates for standard digital receivers and the Interactive Guide Service may constitute an improper shift of rates from a regulated to an unregulated tier. D.T.C. 13-8 Rate Order at 7; D.T.C. 12-7 Rate Order at 8; *see also* 47 C.F.R. § 76.923(a). Charter has taken the same approach this year, including the standard digital receiver and remote in its Form 1205 and providing that equipment to basic and expanded basic subscribers for no charge, but excluding the Interactive Guide Service from its Form 1205 and charging \$6.99 per standard digital receiver, per month, for the Interactive Guide Service. *See* Ex. 1; Ex. 19. Based on the record and as fully explained below, the Department concludes that Charter improperly excluded the Interactive Guide Service from its Form 1205.

As highlighted above, FCC rules state that regulated equipment includes “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). The cable operator bears the burden of proving that its proposed equipment rates comply with these rules. *See 1993 FCC Rate Order*, 8 FCC Rcd at 5716-17; 47 C.F.R. § 76.937(a). Accordingly, the cable operator must also demonstrate that items excluded from the Form 1205 are not equipment used to receive the basic service tier. The Department again inquired about Charter’s Interactive Guide Service at the evidentiary hearing in this proceeding. Tr. at 23-33, 38-43; *see also* D.T.C. 13-8 Rate Order at 7 (stating that the Department will continue to assess Charter’s placement of the Interactive Guide Service on an unregulated tier); D.T.C. 12-7 Rate Order at 8 (stating that the Department will continue to assess placement of the Interactive Guide Service on an unregulated tier).

Unlike in past proceedings, Charter testified that a subscriber uses the Interactive Guide Service to receive the basic service tier and that the Interactive Guide Service is a part of its standard digital receiver:

HEARING OFFICER CARROLL [of the Department]: But for boxes that it's not -- for boxes that it's not removed, [Interactive Guide Service] is used by a subscriber to receive the basic service tier; is that correct?

MS. ROBINSON [of Charter]: If they choose, yes. Because they're told when they call in, "This is your box. You get these services with it." So they're told, "This is part of the rate. This [is] a part of your box." So they're told from the beginning.

Tr. at 31. Additionally, Charter stated that its standard digital receivers "include" the Interactive Guide Service and that a standard digital receiver with the Interactive Guide Service is "what customers use on a daily basis." *Id.* at 23, 27. Given this testimony, the Department finds that Charter has failed to establish that the Interactive Guide Service is not equipment used to receive the basic service tier. *See* 47 C.F.R. §§ 76.923(a), 76.937(a). Therefore, the Department finds that Charter should have justified the reasonableness of its charges for its Interactive Guide Service in its Form 1205. *See id.* §§ 76.923(a), 76.937(b).

While Charter states in a subsequent filing that its Interactive Guide Service is "a software-based service and is not a component of equipment subject to the Form 1205," the Department finds that this statement, when considered with the testimony quoted above, is insufficient to carry Charter's burden. RR-4(b); *see* 47 C.F.R. § 76.937(a); Tr. at 31. Charter maintains that the Interactive Guide Service is optional for subscribers and states that the Interactive Guide Service can be "deactivated" from a standard digital receiver. Tr. at 27-29; RR-4(a). Charter did not claim, however, that the Interactive Guide Service can be removed physically from a standard digital receiver. *See* Tr.; RR-4. This indicates that the Interactive

Guide Service, while capable of being deactivated, is still part of the standard digital receiver. *See infra* pp. 9-10.

The quoted testimony of Ms. Robinson—sufficient on its own to be the basis for a conclusion that Charter has not carried its burden—when combined with the rest of the record in this proceeding, indicates that Charter’s Interactive Guide Service is functionally indistinguishable from Time Warner Cable’s “The Guide” (also known as the Navigator), which the Department found to be regulated equipment under the FCC’s rules. *See In re Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams, & Pittsfield Sys., D.T.C. Docket 13-10, Rate Order at 22-25 (Nov. 26, 2014) (“D.T.C. 13-10 Rate Order”); Tr. at 31.*<sup>4</sup> Specifically, at their most basic level, the Interactive Guide Service and The Guide are each an integrated software component of a digital cable box. *Compare* RR-4(b), *with* Letter from John E. Fogarty, Esq., Vice President & Assistant Chief Counsel, Time Warner, to Sean M. Carroll, Hearing Officer, Dep’t (Aug. 22, 2014) (on file with the Department) (“Fogarty Letter”). The Interactive Guide Service and The Guide each permit a subscriber to watch the basic service tier via a “guide”-like interface, informing the subscriber of the available and currently selected channels. *Compare* RR-4(b), *with* Fogarty Letter.

One apparent difference between the Interactive Guide Service and The Guide is that the Interactive Guide Service may be deactivated in a standard digital receiver upon subscriber request, using a billing code on a subscriber’s bill.<sup>5</sup> RR-4(a). This distinction, however, does not change the Department’s analysis of the Interactive Guide Service under the FCC’s rules. The deactivation of the Interactive Guide Service via a billing code does not make the Interactive

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<sup>4</sup> The D.T.C. 13-10 Rate Order is currently under appeal at the FCC.

<sup>5</sup> The option to deactivate the Interactive Guide Service is rarely invoked by subscribers; Charter states that only one Massachusetts subscriber currently uses a standard digital receiver with the Interactive Guide Service deactivated. RR-4(c).

Guide Service any less a part of the standard digital receiver. Rather, the evidence indicates that the Interactive Guide Service remains part of the standard digital receiver, it is simply turned off. And the fact that a Charter subscriber can receive the basic service tier without using the Interactive Guide Service does not mean that the Interactive Guide Service is not used to receive the basic service tier. In this way, as well, the Interactive Guide Service is similar to The Guide because each is not *necessary* to receive the basic service tier. *Compare* RR-4(a), and RR-4(c), with Fogarty Letter. This fact, however, is not relevant to the Department's inquiry under the FCC's rules. As the Department has stated: "[t]o analogize, a subscriber can view the basic service tier without an additional outlet, but that does not mean that an additional outlet is not regulated equipment when a fee for it is charged to basic service tier subscribers." *In re Time Warner Cable Inc. Appeal of Local Rate Order, Opposition of the Mass. Dep't of Telecomms. & Cable* at 9 n.37 (filed Jan. 12, 2015) (citing *In re Comcast Cable Commc'ns, LLC (N. Metro)*, 29 FCC Rcd 2885, 2890, *Order* (MB 2014)). Similarly, there is no doubt that a remote control is not *necessary* to receive the basic service tier, but a remote control is regulated equipment nonetheless because subscribers do, in fact, use a remote control to receive the basic service tier. 47 C.F.R. § 76.923(a)(1)(ii).

Even notwithstanding the Interactive Guide Service's similarities to The Guide, however, Charter testified that the Interactive Guide Service is used to receive the basic service tier. Tr. at 31. The Department finds this testimony credible, and therefore concludes based on the record that Charter has failed to carry its burden to prove that its Interactive Guide Service is not equipment used to receive the basic tier. *See* 47 C.F.R. §§ 76.923(a), 76.937(a).

As Charter did not prove that its Interactive Guide Service is not regulated equipment, Charter is required to justify its \$6.99 charge for the equipment. *See* 47 C.F.R. §§ 76.923(a)(1),

76.937(b). Charter did not attempt to make such a justification as the company excluded the charge from its Form 1205. *See* Ex. 1. Rather, Charter claimed that the Interactive Guide Service is not equipment subject to Form 1205. *See id.*; RR-4(b). In accordance with FCC rules, the Department thus finds Charter in default and determines that Charter's \$6.99 rate for the Interactive Guide Service is unreasonable. *See* 47 C.F.R. § 76.937(d) ("A franchising authority . . . may find a cable operator that does not attempt to demonstrate the reasonableness of its rates in default.").

Having found Charter in default and Charter's charge for the Integrated Guide Service unreasonable, the Department, using the best information available, and pursuant to its authority under 47 C.F.R. § 76.941, prescribes a rate of \$0.83 for the Interactive Guide Service. *See id.* §§ 76.937(d), 76.941. Charter did not provide the Department with any cost information related to the Interactive Guide Service, maintaining instead that the Interactive Guide Service is unregulated. *See* RR-4(b). During a rate proceeding, where a cable operator maintains that certain cost information is not necessary for the franchising authority's analysis, it is reasonable for the franchising authority to disallow such costs. *FCC Time Warner Order*, 20 FCC Rcd at 12220-21, 12224 (finding that because Time Warner maintained that the fair market value of a channel was not relevant to the franchising authority's analysis, it was reasonable for the franchising authority to disallow the costs Time Warner claimed were associated with the channel). By claiming that the Interactive Guide Service is unregulated, Charter effectively declared that related cost data, if any, were unnecessary to the Department's analysis. Accordingly, the Department disallows additional, unaccounted for costs, if any, that may be associated with the Interactive Guide Service aspect of the standard digital converter. *See id.* Moreover, the Department finds that any costs Charter may have incurred due to the Interactive

Guide Service have already been accounted for in Charter's cost data for its standard digital receiver in its Form 1205. *See* Ex. 1; Tr. at 31 (stating that the Interactive Guide Service is a part of the standard digital receiver); D.T.C. 13-10 Rate Order at 27.

Charter's proposed MPR for the standard digital receiver is \$0.83. Ex. 1. As noted above, Charter's proposed OSR for its standard digital receiver is zero. *Id.* As fully explained above, the Department finds that Charter's Interactive Guide Service is fully integrated in its standard digital receiver. *See supra* pp. 8-10. Therefore, the Department concludes that a prescribed rate of \$0.83—equal to Charter's proposed MPR for the standard digital receiver—for the standard digital receiver and the Interactive Guide Service, inclusive, is reasonable.<sup>6</sup> *See* Ex. 1. Indeed, the Department does not possess any other cost data for the Interactive Guide Service that would lead it to prescribe a rate other than Charter's proposed MPR for the standard digital receiver.<sup>7</sup> *See In re Harron Commc'ns Corp. v. Mass. Cmty. Antenna Television Cmm'n*, 10 FCC Rcd 2349, 2351, *Consolidated Order* (CSB 1995) ("*FCC Harron Order*") (finding that it was reasonable for the franchising authority to disallow certain costs from the cable operator's equipment basket because the operator failed to provide the franchising authority with detailed information on those costs).

As a result of the foregoing, the Department prescribes a rate of \$0.83 for the Interactive Guide Service and determines that this prescription is reasonable. *See* 47 C.F.R. § 76.941. The Department directs Charter to file a refund plan for its subscribers in communities in Massachusetts that are currently subject to rate regulation by November 20, 2015, to account for

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<sup>6</sup> The Department has inserted \$0.83 as the OSR effective February 2015 for the standard digital converter. *See* Attachment 1.

<sup>7</sup> As to related cost information from other Massachusetts cable operators, the only relevant cost information that the Department possesses is in regards to Time Warner's The Guide, for which the Department prescribed a rate of zero. *See* D.T.C. 13-10 Rate Order at 25; *FCC Harron Order*, 10 FCC Rcd at 2351-52 (permitting the franchising authority to use cost data from other cable operators to estimate costs for the petitioning cable operator).

any charges for the Interactive Guide Service above \$0.83 that Charter subscribers in regulated Massachusetts communities have paid to date. *See id.* §§ 76.937(d), 76.942.

## 2. *Other Equipment and Installation Issues*

Charter has also proposed several adjustments to its MPRs and OSRs for equipment and installation. *Compare* Ex. 1, with D.T.C. 13-8, Ex. Charter-1. In particular, Charter has proposed to increase the MPRs for each of its installation charges, while proposing to increase most of the corresponding OSRs. *Compare* Ex. 1, with D.T.C. 13-8, Ex. Charter-1. The main driver behind the proposed rate increases is Charter's reported service, installation, and maintenance of equipment and plant costs, particularly Charter's total capital costs and total annual operating expenses. *Compare* Ex. 1, with D.T.C. 13-8, Ex. Charter-1.

In terms of Charter's capital costs, Charter explains that the increases are due to Charter's all digital transition, the increased use of High-Definition Multimedia Interface (HDMI) cables versus traditional coaxial cables, Charter's July 2013 acquisition of Optimum West from Cablevision, and equipment costs related to Charter's technician quality assurance program. *See* D.T.C. IR 1-3. In addition, Charter's gross book value of vehicles increased by approximately 45% from last year. *See* D.T.C. IR 1-4. *Compare* Ex. 1, with D.T.C. 13-8, Ex. Charter-1. Charter explains that this increase is due to a significant investment in its vehicle fleet to upgrade older vehicles and to purchase additional vehicles for use by the employees obtained from Optimum West. D.T.C. IR 1-4; Tr. at 11-13.

The Department finds that Charter's handling of the accounting of regulated assets acquired from Optimum West was appropriate and accepts as reasonable Charter's explanations for its increased capital costs, due in large part to its acquisition of Optimum West. *See* RR-3. Charter acquired 356,000 subscribers and 935 employees applicable to the FCC Form 1205 from

Optimum West. RR-1. It is reasonable for increased capital costs to accompany an acquisition of this magnitude. In addition, the Department acknowledges Charter's continuing transition to all digital and the increased capital costs that accompany such a transition. *See* Tr. at 18.

Finally, the Department recognizes Charter's commitment to customer service as evidenced by Charter's newly expanded quality assurance groups in Massachusetts. *See id.* at 9-11. Charter stated: "[w]e have always had a quality assurance group, but we've expanded that. These are technicians who follow behind the work of our regular technicians just to test the quality of their work to make sure it's up to our standards. And we've just expanded that in an effort to improve the service we deliver to customers." *Id.* at 10. Charter purchased additional testing equipment to support this expansion and the Department finds that the increased costs associated with Charter's customer service initiative are reasonable. *See* D.T.C. IR 1-3.

Similarly, Charter states that its increased operating costs are due mainly to employee-related costs, in particular costs related to the employees obtained from Optimum West and costs related to the aforementioned expansion of Charter's quality assurance program. D.T.C. IR 1-5. As indicated above, the Department finds that it is reasonable that increased costs would accompany these undertakings and determines that Charter appropriately accounted for such costs in its Form 1205.

Finally, the Department also inquired about Charter's proposed maximum permitted hourly service charge, which increased from \$42.26 to \$46.93. *Compare* Ex. 1, with D.T.C. 13-8, Ex. Charter-1. First, the Department wanted to get a better understanding of how Charter calculated its Customer Equipment and Installation Percentage, including the source of the increase from the previous year. D.T.C. IR 1-6; *see also* Ex. 1. Charter provided its formula for calculating the weighted average percentage of time allocated to residential cable service from

ground block to activity inside the customer premises and pointed to an increased number of technicians and a small increase in technicians' time spent inside customers' premises as the reasons for the increase in the Customer Equipment and Installation Percentage. D.T.C. IR 1-6. Given the Optimum West acquisition discussed above, the Department accepts Charter's reasoning for this increase. Second, the Department also wanted to get an understanding as to what factors were driving the increase in Charter's reported Total Labor Hours, which is used in the calculation of the hourly service charge. D.T.C. IR 1-7; *see also* Ex. 1. As with the Department's questions regarding Charter's Customer Equipment and Installation Percentage, the company responded that the increase in the labor hours was due to the increase of Charter's employee headcount on account of its new employees from Optimum West and an increase in its technicians' time spent inside customers' premises. D.T.C. IR 1-6, 1-7. Charter further explained that the employees obtained from Optimum West were the main driving factor behind the increase in Total Labor Hours. RR-2. It is clear that Charter's acquisition of Optimum West was a significant driving force behind the increase in Charter's Total Labor Hours and other line items related to Charter's proposed hourly service charge. The Department finds that Charter's proposed increase to its hourly service charge is reasonable and in compliance with federal law.

IV. ORDER

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

ORDERED: That Charter's FCC Forms 1240, as filed on April 17, 2015, for the communities of Belchertown, Brimfield, Chicopee, East Longmeadow, Easthampton, Hadley, Hampden, Harvard, Holden, Ludlow, Paxton, Southampton, Spencer, Sturbridge, West Boylston, and Wilbraham are APPROVED; and it is

FURTHER ORDERED: That Charter's FCC Form 1205, as filed on October 31, 2014, is REJECTED; and it is

FURTHER ORDERED: That Charter resubmit its FCC Form 1205 in accordance with this Rate Order and file a refund plan for all of its subscribers in regulated Massachusetts communities by November 20, 2015, to account for any overcharges resulting from the rejection of Charter's Integrated Guide Service charge and the prescription of a rate for its standard digital receiver and Interactive Guide Service, inclusive.

By Order of the Department



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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.