



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

D.T.C. 13-10

November 14, 2016

Petition of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams, and Pittsfield Systems.

D.T.C. 14-6

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.

D.T.C. 14-7

Petition of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams, and Pittsfield Systems.

D.T.C. 15-4

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 subject to rate regulation.

ORDER ON MOTION FOR APPROVAL OF SETTLEMENT

I. INTRODUCTION AND PROCEDURAL HISTORY

In this Order, the Department of Telecommunications and Cable (“Department”) grants the Motion for Approval of Settlement (“Motion”) filed by Charter Communications (“Charter”) in Dockets D.T.C. 13-10, D.T.C. 14-6, D.T.C. 14-7, and D.T.C. 15-4 (collectively, the “open dockets”), and thereby accepts and adopts the attached Offer of Settlement.

The Department issued Rate Orders rejecting certain rates as not in compliance with federal law and requiring the filing of refund plans in Dockets D.T.C. 13-10, D.T.C. 14-6, and

D.T.C. 14-7.¹ *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams, & Pittsfield Sys.*, D.T.C. 14-7, *Rate Order* (Nov. 23, 2015) (“D.T.C. 14-7 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 subject to rate regulation*, D.T.C. 14-6, *Rate Order* (Oct. 30, 2015) (“D.T.C. 14-6 Rate Order”); *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams, & Pittsfield Sys.*, D.T.C. 13-10, *Rate Order* (Nov. 26, 2014) (“D.T.C. 13-10 Rate Order”). The Department’s Rate Order in Docket D.T.C. 15-4 remains pending, but its effect is subsumed by this Order.² *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. 15-4 (filed Nov. 4, 2015). Charter takes the position that its rates during the time period applicable to each of the open dockets (“relevant time periods”) are in compliance with federal law. *See, e.g., 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. 15-4, Transcript of Record at 34-35 (maintaining that Charter’s rate for its Interactive Guide Service is unregulated). There were no intervenors in Dockets D.T.C. 13-10, D.T.C. 14-6, or D.T.C. 14-7. The Town of Dudley intervened in Docket D.T.C. 15-4. *See* D.T.C. 15-4, *Hearing Officer Ruling on the Town of Dudley’s Petition to Intervene* (Aug. 23, 2016). On November 14, 2016, Charter filed the Motion, requesting that the Department enter an order

¹ Dockets D.T.C. 13-10 and D.T.C. 14-7 applied to petitions filed by Time Warner Cable, Inc. (“TWC”). On May 18, 2016, Charter merged with TWC, allowing Charter to step into the shoes of TWC for these proceedings, as well as for rates in legacy TWC communities for the 2016 rate year.

² The deadline for the Department to issue a rate order on Charter’s petition in D.T.C. 15-4 was November 4, 2016, because the Department received Charter’s rate filings in that docket on November 4, 2015. *See* 47 C.F.R. § 76.933(g)(2) (affording a franchising authority 12 months from the date the operator filed for the rate adjustment to issue a rate order); 220 C.M.R. § 1.02(2)(a) (providing that petitions are deemed to be filed with the Department on the date on which they are received by the Department at its office). On November 3, 2016, and November 9, 2016, the Department received extensions of this deadline until November 18, 2016, from the Federal Communications Commission (“FCC”). E-mail from Steven A. Broecker, Senior Deputy Chief, Policy Div., Media Bureau, FCC, to Sean M. Carroll, Hearing Officer, Dep’t (Nov. 9, 2016).

accepting Charter's Offer of Settlement in each of the open dockets and, accordingly, closing the open dockets, subject to the continued jurisdiction of the Department to enforce the terms of the Offer of Settlement. Motion at 1. For the reasons set forth below, the Department grants Charter's Motion and accepts and adopts Charter's Offer of Settlement (hereinafter, "Settlement Agreement").

II. CONSOLIDATION OF THE OPEN DOCKETS

As an initial matter, the Department has the authority to address the open dockets and the issues raised therein in a single order. *See Investigation by the Dep't of Pub. Utils., under the provisions of G.L. c. 164, sec. 94G, into the causes & mgmt. of the outage, beginning Apr. 12, 1986, at Pilgrim Nuclear Power Station, an elec. power generating station owned & operated by the Boston Edison Co., & into the prudence of purchased power costs incurred during the outage*, D.P.U. 88-28, *Order* at 9 (Oct. 31, 1989) ("D.P.U. 88-28/88-48/89-100 Order"). The D.P.U. 88-28/88-48/89-100 Order resolved three Department investigations into the rates and practices of a single company, affirming the Department's authority "to approve an integrated settlement of several closely related cases." *Id.* at 1-3, 9. The issues the Department investigated in the three dockets that the D.P.U. 88-28/88-48/89-100 Order resolved "exhibit[ed] broad overlap and on some points [we]re identical." *Id.* at 9.

Here, similar to the D.P.U. 88-28/88-48/89-100 Order, which was requested by the same parties in each of the dockets at issue, Charter is the petitioner in each of the open dockets.³ Additionally, each of the Department's contested Rate Orders in the open dockets, including the pending Rate Order in D.T.C. 15-4, which will now be resolved through the Settlement Agreement, is based primarily on federal cable regulations, and contains a disputed charge for a guide service, many features of which are identical across the dockets. *See* 47 C.F.R. § 76.923; D.T.C. 14-6 Rate Order at 9 (illustrating the similarities between the Interactive Guide Service and The Guide). Therefore, the Department finds broad overlap among the open dockets, and

³ *See supra* n.1. The Town of Dudley, as an intervenor in D.T.C. 15-4, has full party rights with respect to this Order. *See* 220 C.M.R. § 1.03(2).

also one issue that, on some points, is indistinguishable across the open dockets. As a result, the Department has the authority to consolidate the open dockets into a single order approving a settlement.

III. STANDARD OF REVIEW

Having found that the Department may issue a single order approving a settlement to resolve each of the open dockets, the Department must next make a determination with respect to the Settlement Agreement, specifically. The Department is the certified franchising authority under federal and state law for regulating basic service tier cable rates and associated equipment costs in Massachusetts. *See* 47 U.S.C. § 543; 207 C.M.R. § 6.02. The Department also has general state law authority to ensure that cable rates are reasonable. G.L. c. 166A, § 15. Consistent with the foregoing, the Department may approve a cable rate settlement if doing so is in the public interest. *Petition of Comcast Cable Commc'ns, Inc. to establish & adjust the basic serv. tier programming, equip. & installation rates for the cmtys. served by Comcast that are currently subject to rate regulation*, D.T.C. 10-8, *Order on Motion to Approve Settlement Agreement* at 6 (Oct. 4, 2011); *see also* *Petition of Boston Edison Co. for approval by the Dep't of Pub. Utils. pursuant to G.L. c. 164, s. 17A, for the Co. to invest up to \$45 million in a wholly-owned, non-util. subsidiary, to be known as Boston Energy Tech. Group, Inc., & to issue advances to the proposed subsidiary pursuant to a Tax Sharing Agreement between the Co. & the proposed subsidiary & pursuant to G.L. c. 164, s. 94B, for approval of a Relates Mgmt. Servs. Agreement & Tax Sharing Agreement between the Co. & its proposed subsidiary*, D.P.U. 93-37, *Order on Joint Offer for Settlement and Joint Offer for Partial Settlement* at 11 (June 18, 1993) (citing *Petition of Mass. Elec. Co. for approval by the Dep't of Pub. Utils. in accordance with 220 CMR 9.00, of its application for cost recovery and preapproval of its 1993 Conservation & Load Mgmt. Programs*, D.P.U. 92-117, *Order on Joint Offer for Settlement* (Jan. 29, 1993)). In approving a settlement, the Department must fulfill its statutory obligation to

establish cable rates that are just and reasonable. *See* G.L. c. 166A, § 15; D.P.U. 88-28/88-48/89-100 Order at 8-9.

IV. ANALYSIS AND FINDINGS

The Department finds that the Settlement Agreement is in the public interest, and accordingly grants Charter's Motion. The Settlement Agreement is the result of over one year of arm's length negotiations between Charter, TWC, and the Department. *See, e.g.*, D.T.C. 14-6, Letter from Paul D. Abbott, Counsel, Charter, to Sara J. Clark, Sec'y, Dep't (Nov. 18, 2015) (confirming the Department's grant of Charter's request to extend certain deadlines arising from the D.T.C. 14-6 Rate Order so the parties could explore a voluntary settlement). The Settlement Agreement is in the public interest because it resolves any uncertainty surrounding Charter's liability stemming from the open dockets while providing benefits to Charter subscribers in the affected communities.⁴

First, as detailed in Attachment B to the Settlement Agreement, subscribers in the affected communities will receive refunds in the form of bill credits over the course of the 12-month period running from February 1, 2017, to January 31, 2018,⁵ with the amounts varying depending on the community in which the subscribers live (i.e., in a legacy TWC community, a legacy Charter community, or a legacy Charter community for which the Department recently recertified its rate regulation authority) and the level of service to which they subscribe.⁶ Significantly, Charter's refund plan was designed so that basic service tier-only ("BST-only")

⁴ For a list of the affected communities, see Attachment A to the Settlement Agreement.

⁵ This 12-month period corresponds to Charter's 2017 rate year.

⁶ Specifically, in Attachment B: credits to "Basic Only Original 16 Communities" will be applied to BST-only subscribers in the "Legacy Charter Communities" referenced in Attachment A. Credits to "Basic Only Recertified 10 Communities" will be applied to BST-only subscribers in the "Legacy Charter Communities / Recertified Communities" referenced in Attachment A. Credits to "Non-Basic Only Original 16 Communities" will be applied to non-BST-only subscribers in the "Legacy Charter Communities" referenced in Attachment A. Credits to "Basic Only" will be applied to BST-only subscribers in the "Legacy TWC Communities" referenced in Attachment A. And credits to "Non-Basic Only" will be applied to non-BST-only subscribers in the "Legacy TWC Communities" referenced in Attachment A.

subscribers will be credited in full for the amount BST-only subscribers were charged for the Interactive Guide Service or The Guide during the relevant time periods.

Second, BST-only subscribers in the affected communities will receive the Interactive Guide Service or The Guide at no charge for at least the next seven years, while Charter will be permitted to charge non-BST-only subscribers a fee for the Interactive Guide Service or The Guide during the same time period. This regulatory landscape for the Interactive Guide Service and The Guide that results from the Settlement Agreement is not only just and reasonable, but will be consistent with the FCC's historical treatment of fees for additional outlets. *See In re Comcast Cable Commc'ns, LLC (North Metro)*, 29 FCC Rcd. 2885, 2890, *Order* (MB 2014) (“[E]quipment regulations still apply to all the equipment in a subscriber’s home that is provided and maintained by the cable operator and that is used to receive the BST, even if it is also used to receive additional tiers of unregulated services.”); *In re Comcast of Dallas, L.P.*, 20 FCC Rcd. 5892, 5894, *Order* (MB 2005) (holding that an additional outlet charge assessed only against subscribers who receive programming tiers above the BST is not subject to franchising authority jurisdiction); *In re Comcast Cable of Ind./Mich./Tex., Inc.*, 19 FCC Rcd. 16344, 16348-49, *Order* (MB 2004) (“[I]f a cable operator charges a rate for additional outlets used by customers who subscribe to the BST, then the operator’s certified franchising authority has jurisdiction over the rate for those outlets.”). Not only does this resolution provide a clear benefit to BST-only subscribers, but resolving the regulatory treatment in Massachusetts of the Interactive Guide Service and The Guide moving forward will be beneficial to both the Department and Charter. These fees were at issue in each of the four open dockets, and coming to a mutually agreeable resolution to the dispute is of significant benefit.

Third, the Settlement Agreement also resolves a number of outstanding regulatory issues brought about by Charter’s merger with TWC and the Department’s filing of FCC Form 328 to recertify its regulatory authority in ten legacy Charter communities. *See* MDTC Form 328, Certification of Franchising Authority to Regulate Basic Cable Serv. Rates and Initial Finding of

Lack of Effective Competition (Dec. 8, 2015), *available at*

<http://apps.fcc.gov/ecfs/proceeding/view?name=INBOX-76.910>. Again, coming to a mutually agreeable resolution to these outstanding issues, many of which are procedural, is beneficial to both Charter and the Department.

For all of these reasons, the Department finds that the Settlement Agreement is in the public interest. The Department also finds, in accordance with and as evidenced by the foregoing, that the cable rates that will result from adoption of the Settlement Agreement, as well as the Department's continued assertion of its regulatory authority in the affected communities, will be just and reasonable. *See* G.L. c. 166A, § 15; D.P.U. 88-28/88-48/89-100 Order at 8-9. Accordingly, the Department grants Charter's Motion and adopts the Settlement Agreement.

V. ORDER

Accordingly, after due consideration, it is:

ORDERED: That Charter's Motion for Approval of Settlement is GRANTED; and it is

FURTHER ORDERED: That the Department ACCEPTS and ADOPTS Charter's Offer of Settlement; and it is

FURTHER ORDERED: That Charter and the Department comply with the terms of the Offer of Settlement, subject to the authority of the Department to enforce said terms; and it is

FURTHER ORDERED: That, in light of the above, Dockets D.T.C. 13-10, D.T.C. 14-6, D.T.C. 14-7, and D.T.C. 15-4 are hereby CLOSED.

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.