



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY**  
**Cable Television Division**

ORDER ON COMPLIANCE FILING

CTV 04-8

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240 and 1205 filed by Adelphia Cable Communications, Inc.

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FOR: ADELPHIA CABLE COMMUNICATIONS, INC.  
Petitioner

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Intervenor

I. INTRODUCTION

On June 8, 2005, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy issued a Rate Order concerning Adelphia Cable Communications, Inc.’s (“Adelphia” or “the Company”) proposed Federal Communications Commission (“FCC”) Forms 1240 and 1205 for its regulated Massachusetts communities. Adelphia Cable Communications, Inc., CTV 04-8 (2005) (“Order”). In the Order, the Cable Division determined that Adelphia’s proposed rates were not calculated in compliance with federal law and regulations. Id. at 17-18. Specifically, for many communities, the Company did not report the correct rate on a worksheet used to calculate the basic service tier (“BST”) maximum permitted rate (“MPR”). Id. On some communities’ rate forms, Adelphia did not appropriately report the deletion of channels from the BST, did not remove the external costs associated with these channels from the BST rate, and did not report the approved FCC Form 1235 upgrade surcharge. Id. at 18, 21. The Cable Division directed Adelphia to recalculate the rates at issue and submit revised forms. Id. at 17-18, 21.

On June 14, 2005, Adelphia submitted a filing to the Cable Division (“Compliance Filing”), consisting of revised FCC Forms 1240 for Amesbury, Great Barrington, Halifax, Kingston, Lee, Lenox, Marshfield, Merrimac, Pembroke, Plymouth, Plympton, Salisbury, Sheffield and Stockbridge, and refund plans for Amesbury, Great Barrington, Lee, Lenox, Merrimac, Sheffield and Stockbridge. Here, the Cable Division reviews the Company’s filing for compliance with the Order.

II. ANALYSIS AND FINDINGS

1. True-Up Adjustments

On Adelphia's FCC proposed Form 1240 filings for a number of communities, the Company had entered, at "Worksheet 8 - True-Up Rate Charged," BST rates for the first three months of the true-up period, December 2003 through February 2004, that differed from either the actual BST rates that Adelphia had charged subscribers during those months, or the BST maximum permitted rate ("MPR") that the Cable Division had approved for that month.

Specifically, on the Amesbury, Merrimac and Salisbury filings, Adelphia had entered the same BST rate for all 12 months of the true-up period, even though a different rate was in effect for the first three months of that period. Id. at 6. In its Compliance Filing, Adelphia submitted FCC Forms 1240 with the correct BST rates reported for all 12 months of Worksheet 8 (Compliance Filing at Exh. 1, at 10; Exh. 6, at 10; Exh. 8, at 10). The Cable Division finds that the FCC Forms 1240 submitted for Amesbury and Merrimac are in compliance with our Order, and that the BST MPRs established therein are reasonable.

The revised BST MPRs approved herein are less than the rates that the Company is charging in Amesbury and Merrimac. In Amesbury the approved BST MPR is \$10.68, whereas the actual BST rate being charged subscribers is \$10.70; in Merrimac, the approved BST MPR is \$10.48, whereas the actual BST rate charged is \$10.70 (Compliance Filing at June 14, 2005, letter, Attachment I). Adelphia has submitted plans to refund its overcharges to subscribers in these communities (id.). The refund will return overcharges paid between March 2005, and July 2005, as a single credit on subscribers' bills in August 2005.

Commencing in August 2005, the Company will also charge the approved BST MPR as its actual BST rate in Amesbury and Merrimac. The Cable Division finds that Adelphia's refund plans appropriately calculate the overcharges in the BST rate owed to subscribers. We find that Adelphia's refund plans for these communities are in compliance with applicable law, and that the refunds to be paid hereunder are appropriate.

On the proposed filings for Halifax, Marshfield, Pembroke and Plympton, Adelphia appropriately included the BST MPR approved for these communities on Worksheet 8 for the last nine months, but it also included this same rate on Worksheet 8 for the first three months, even though the rate was not in effect during this period. Order at 7. In its Compliance Filing, Adelphia has submitted revised FCC Forms 1240 that report the actual BST rate in effect during the first three months of the true-up period (Compliance Filing, Exh. 3, at 8; Exh. 6, at 12). The Cable Division finds that the revised FCC Forms 1240 submitted for Halifax, Marshfield, Pembroke and Plympton are in compliance with our Order, and the BST MPRs established therein are reasonable.

In Halifax, Pembroke and Plympton, the approved BST MPR is \$13.41 (Compliance Filing, Exh. 3, at 4). In these communities, the Company is charging \$13.70,<sup>1</sup> including an FCC Form 1235 upgrade surcharge component.<sup>2</sup> The Compliance Filing reports a BST MPR

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<sup>1</sup> Adelphia initially proposed to charge an actual BST rate of \$14.47 in Halifax, Pembroke and Plympton (Exh. Adelphia-11, at exhibit I). However, the rate change notice for these communities filed with the Cable Division pursuant to 207 C.M.R. § 10.01(3) reports a BST rate of \$13.70.

<sup>2</sup> The Cable Division approved FCC Form 1235 upgrade surcharges for Halifax,

(continued...)

of \$13.41 (Compliance Filing, Exh. 3, at 4). In Marshfield, the approved BST MPR is \$12.04 (Compliance Filing, Exh. 5, at 4). Here, the Company is charging \$12.43 (Exh. Adelpia-14, at exhibit I). The actual BST rate does not include any amount of upgrade surcharge available. Typically, where a BST actual rate exceeds an approved BST MPR, the Cable Division is concerned about overcharges. However, in this type of matter, the FCC has concluded that a cable operator may avoid a refund by adding a previously uncharged amount of its upgrade surcharge to its actual BST rate. Marcus Cable Associates, L.P., DA 99-378 (1999); see also Adelpia Cable Communications, Inc., CTV 03-5, “Order on Compliance Filing” at 5 (October 15, 2004). Because the Cable Division has approved FCC Form 1235 upgrade surcharges for Halifax, Marshfield, Pembroke, and Plympton, Adelpia may include an upgrade surcharge component in each community’s BST rate. Therefore, no refunds are required in these communities.

In Kingston and Plymouth, the Company implemented an upgrade surcharge, but Adelpia did not enter the BST MPR applicable to the first three months on Worksheet 8 of the FCC Forms 1240 filed for these communities. Id. In its Compliance Filing, Adelpia has submitted FCC Forms 1240 for Kingston and Plymouth that report, for the first three months on Worksheet 8, the BST MPRs that were actually in effect during these months (Compliance Filing, Exh. 4, at 10; Exh. 7, at 10). We find that the revised FCC Forms 1240 submitted for Kingston and Plymouth are in compliance with our Order and the BST MPRs established

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<sup>2</sup>(...continued)

Marshfield, Pembroke and Plympton in Adelpia Cable Communications, Inc., CTV 03-5, at 14 (2004).

therein are reasonable.

The approved BST MPR is \$13.60 for Kingston and \$13.67 for Plymouth (Compliance Filing at Exh 4, at 4; Exh. 7, at 4). Adelphia is charging a BST rate of \$13.69 in Kingston and Plymouth (Exhs. Adelphia-12, at exhibit I; -16, at exhibit I). Because the Cable Division has approved an FCC Form 1235 upgrade surcharge for Kingston and Plymouth, Adelphia may include an upgrade surcharge component in each community's BST rate. Therefore, no refund is required. Marcus Cable Associates, L.P., DA 99-378 (1999).

2. Channel Changes - Great Barrington System

In the Great Barrington System, Adelphia deleted 12 channels from the BST and added three new channels, for a net decrease in total BST channels from 30 to 21 channels. Order at 9. This change required Adelphia to adjust its BST rate to reflect both the reduction in the number of regulated channels, and the decrease in its external programming costs. Id.

The FCC's rate regulations provide that a cable operator must reduce its rate for the BST when it decreases the number of channels carried on the tier. Id. at 10. This is accomplished by calculations on Worksheets 4 and 5 of FCC Form 1240. Id. at 10-11. The first step in this calculation is to calculate the per-channel residual on Worksheet 4. Id. The Instructions for FCC Form 1240 direct cable operators to enter, on Line 401 of Worksheet 4, the average BST rate for the true-up period from Worksheet 8. Id. at 11. The Instructions also direct cable operators to enter, on Line 402, the external costs amount for the true-up period. Id. In its proposed filings for the Great Barrington system, Adelphia followed the FCC's directions although it used incorrect data, but in its later filings it adopted a different

approach. Id. at 11-12. In the Order, we directed Adelphia to follow the FCC's Instructions. Id. at 13. In its Compliance Filing, Adelphia has now submitted FCC Forms 1240 for the Great Barrington system that have carried over onto Worksheet 4 the appropriate numbers from Worksheets 7 and 8 (Compliance Filing, Exh. 2, at 8, 11, 13; Exh. 9, at 8, 11, 13).

With respect to the programming costs, during the true-up period, Adelphia reported monthly per-subscriber programming costs of \$0.92 per subscriber for December 2003, which increased to \$1.14 for July 2004, but then dropped to \$0.08 on August 2004, and stayed at that level for the remainder of the true-up period and all of the projected period. Id. at 13.

Adelphia explained that it claimed higher programming costs through July 2004, because, in previous periods, the Company had failed to pass on the programming costs associated with three channels: MTV, Nickelodeon and VH-1. Id. However, we determined that none of these channels had been carried on the BST during the true-up period, and directed Adelphia to remove these channels' costs. Id. at 13-14. In its Compliance Filing, Adelphia has removed the costs associated with these channels from Worksheet 7, Line 701 for the true-up period. (Compliance Filing, Exh. 2, at 11; Exh. 9, at 11). Because of this change, Adelphia is now reporting only appropriate programming costs on Worksheet 7 for the true-up period.

3. FCC Form 1235 Upgrade Surcharge - Great Barrington System

On Adelphia's FCC Forms 1240 filed for the Great Barrington system, the Company reported an FCC Form 1235 upgrade surcharge of \$6.17, instead of the \$4.53 approved by the Cable Division. Id. at 21. In the Order, we directed Adelphia to adjust its forms accordingly, and to make any necessary adjustments to its basic service rates and pay refunds, if necessary.

Id.

In its Compliance Filing, the Company reported the correct upgrade surcharge (Compliance Filing, Exh. 2 at exhibit I; Exh. 9 at exhibit I). The Company also included a correctly completed Worksheet 8,<sup>3</sup> and, as noted above, the correct numbers on Worksheet 4. As noted above, each form also included the appropriate programming costs on Worksheet 7, Line 701 for the true-up period. The Company also complied with the Order, and properly amortized the capital payment for public access on the FCC Form 1240 submitted for Great Barrington, Lee, Lenox and Stockbridge. Order at 16. The Cable Division finds that the FCC Forms 1240 submitted for Great Barrington, Lee, Lenox, Sheffield and Stockbridge are in compliance with our Order, and that the BST MPRs established therein are reasonable.

On the revised form for Great Barrington, Lee, Lenox and Stockbridge, the BST MPR plus the upgrade surcharge totals \$12.94, whereas the actual BST rate being charged subscribers is \$13.85 (Compliance Filing, Exh. 2, at exhibit 1).<sup>4</sup> On the revised form for Sheffield, the BST MPR plus the upgrade surcharge totals \$12.63, whereas the actual BST rate

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<sup>3</sup> Adelphia initially made filings for the Great Barrington system that reported a BST rate for all 12 months of Worksheet 8 that the Cable Division could not verify had ever been charged subscribers or been an approved BST MPR. Order at 3-4. In response to a record request, Adelphia revised Worksheet 8 for these communities, reporting the correct rates for all 12 months. Id. at 9, citing RR-CTV-1, exhibit 3, filing 5 at 13, filing 6, at 13; RR-CTV-5, exhibit 3, at 13.

<sup>4</sup> Adelphia had initially proposed charging \$14.28 for the BST in Great Barrington, Lee, Lenox, Sheffield and Stockbridge (Exh. Adelphia-10, at exhibit I; Exh. Adelphia-19, at exhibit I). However, the rate card for these communities filed with the Cable Division pursuant to 207 C.M.R. § 10.02(6) reports a BST rate of \$13.85.



being charged subscribers is \$13.85 (Compliance Filing, Exh. 9, at exhibit 1). Unlike the cases above, the actual BST rates charged in these communities exceed the total of the BST MPR plus the upgrade surcharge and therefore a refund is required. Adelphia has submitted plans to refund the overcharges to subscribers in Great Barrington, Lee, Lenox, Sheffield and Stockbridge (Compliance Filing at June 13, 2005, letter, Attachment I). The refund will return overcharges paid between March 2005, and July 2005, as a single credit on subscribers' bills in August 2005. Commencing in August 2005, the Company will also charge the approved BST MPR plus the upgrade surcharge as its actual BST rate in these communities. The Cable Division finds that Adelphia's refund plans appropriately calculate the overcharges in the BST rate owed to subscribers. We find that Adelphia's refund plans for these communities are in compliance with our Order, and that the refunds to be paid hereunder are appropriate.

### III. CONCLUSION AND ORDER

Upon review and consideration, the Cable Division hereby accepts, as reasonable, Adelphia's FCC Forms 1240 as submitted on June 14, 2005, for Amesbury, Great Barrington, Halifax, Kingston, Lee, Lenox, Marshfield, Merrimac, Pembroke, Plymouth, Plympton, Salisbury, Sheffield and Stockbridge.

Further, after review and consideration, the Cable Division hereby accepts, as reasonable and in compliance with our Order, Adelphia's refund plans, as submitted on June 14, 2005, for Amesbury, Great Barrington, Lee, Lenox, Merrimac, Sheffield and Stockbridge. The Cable Division directs Adelphia to file, within 30 days of the payment of its

refunds, a report that describes: (1) the amount of the refund credited to each subscriber's bill;  
(2) the total amount of the refunds paid in each community.

The attached schedule provides, for each community, Adelphia's previous and current actual rates, as well as its proposed and approved maximum permitted rates.

**By Order of the  
Department of Telecommunications and Energy  
Cable Television Division**

**/s/ Alicia C. Matthews  
Alicia C. Matthews  
Director**

Issued: June 16, 2005