

THE COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION**

In the Matter of) Docket No. Y-99 INC, Y-99 EQU
) Date Issued: April 28, 2000
)
Adelphia Cable) Abington, CUID MA 0225 Kingston, CUID MA 0159
Communications) Adams, CUID MA 0001 Marshfield, CUID MA 0191
) Aquinnah, CUID MA 0275 North Adams, CUID MA 0004
For a Determination) Bourne, CUID MA 0247 Oak Bluffs, CUID MA 0272
) Cheshire, CUID MA 0002 Pembroke, CUID MA 0228
Cable Television) Clarksburg, CUID MA 0003 Plymouth, CUID MA 0123
Rates) Duxbury, CUID MA 0302 Plympton, CUID MA 0245
) Edgartown, CUID MA 0273 Rockland, CUID MA 0224
) Falmouth, CUID MA 0072 Sandwich, CUID MA 0246
) Halifax, CUID MA 0229

RATE ORDER

Craig A. Schmid
Director of Regulation
Adelphia Cable Communications
Main at Water Street
Coudersport, PA 16915-1141
FOR: ADELPHIA CABLE COMMUNICATIONS
Petitioner

Jack K. Freeman
132 Charles Street
Abington, MA 02351
FOR: THE TOWN OF ABINGTON
Intervenor

M. Lynn Smith
P.O. Box 1380
Duxbury, MA 02331-1380
FOR: THE TOWN OF DUXBURY
Intervenor

Roger Wey
Board of Selectmen
Town of Oak Bluffs
P.O. Box 1327
Oak Bluffs, MA 02557

FOR: THE TOWN OF OAK BLUFFS
Intervenor

I. INTRODUCTION

On April 30, 1999, Adelphia Cable Communications (“Adelphia” or “the Company”) filed with the Cable Television Division (“Cable Division”)¹ of the Department of Telecommunications and Energy, proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240s and proposed equipment and installation rates on FCC Form 1205s, for the communities of Adams, Aquinnah, Cheshire, Clarksburg, Duxbury, Edgartown, Falmouth, Kingston, Marshfield, North Adams, Oak Bluffs and Plymouth (the “original communities”).² Pursuant to 47 C.F.R. § 76.933(g), Adelphia put these proposed programming and equipment rates into effect on August 1, 1999.

On October 1, 1999, Adelphia acquired the seven Massachusetts cable franchises of Harron Communications Corp. (“Harron”), serving the communities of Abington, Bourne, Halifax, Pembroke, Plympton, Rockland and Sandwich (the “former Harron communities”). Harron had filed proposed BST programming rates on FCC Form 1210s for these communities on March 11, 1999.³ Harron had also filed proposed equipment and installation rates on combined FCC Form 1205s for these communities on January 15, 1999 for the calendar year ending December 31, 1997, and on March 11, 1999 for the calendar year ending December 31, 1998. Harron did not change its BST programming, equipment and installation rates as a result of these filings. Following its acquisition of Harron, Adelphia assumed the responsibility for defending these rate filings before the Cable Division.

The Cable Division held a public hearing on Adelphia’s pending filings, including the Harron filings, in Plymouth on December 14, 1999. The Towns of Abington, Duxbury and Oak Bluffs intervened in this proceeding. The evidentiary record includes 19 Adelphia exhibits and Adelphia’s responses to 11 record requests posed by the Cable Division. No briefs were filed by any party.

¹ Formally, “division of community antenna television” under G.L. c. 166A, § 2. It was previously named the “community antenna television commission” under G.L. c. 166A, § 2 before it was merged into the Department of Telecommunications and Energy, effective November 25, 1997.

² Adelphia filed combined FCC Form 1240s for its Berkshire County system and its Martha’s Vineyard system, and separate FCC Form 1240s for Duxbury, Falmouth, Kingston, Marshfield and Plymouth. Adelphia filed two combined FCC Form 1205s, one for its Berkshire County system, and the other for its eastern Massachusetts and Martha’s Vineyard systems. Pursuant to the FCC’s rate regulations at 47 C.F.R. § 76.923(n)(3), the FCC Form 1205 is filed on the same date the cable operator files its FCC Form 1240.

³ Harron filed three combined FCC Form 1210s: one for Abington and Rockland (the “Rockland system”), one for Bourne and Sandwich (the “Cape Cod system”), and one for Halifax, Pembroke and Plympton (the “Pembroke system”).

II. STANDARD OF REVIEW AND BURDEN OF PROOF

The standard under which the Cable Division must review rate adjustments on FCC rate forms is found in the FCC's rate regulations. Specifically, the regulations provide that the rate regulator shall assure that the rates comply with the requirements of 47 U.S.C. § 543 of the Cable Television Consumer and Competition Act of 1992 as amended (the "Cable Act"). 47 C.F.R. § 76.922(a). The Cable Division may accept as in compliance with the statute basic service tier rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by 47 C.F.R. § 76.922(c), and may also accept equipment and installation charges that are calculated in accordance with 47 C.F.R. § 76.923. In addition, the Cable Division shall only approve rates it deems reasonable under federal law. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates are reasonable and comply with federal regulations, the burden of proof is on the cable operator to demonstrate that its proposed rates for the basic service tier and accompanying equipment comply with 47 U.S.C. § 543 and implementing regulations. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (released May 3, 1993) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. Local rate regulators, such as the Cable Division, are required to review the Company's FCC rate form filings to determine whether the rates are reasonable and in compliance with the Cable Act. 47 C.F.R. §§ 76.922, 76.923, 76.930.

The FCC Form 1205 allows a cable operator to annually adjust its costs for equipment and installations. Subscriber charges established by FCC Form 1205 shall not exceed charges based on actual costs as determined in accordance with regulatory requirements. 47 C.F.R. § 76.923(a)(2).

The FCC Form 1210 allows a cable operator to update its basic service tier programming rates on a quarterly basis to account for inflation, changes in external costs, and changes in the number of regulated channels. Adjustments on FCC Form 1210 for inflation and changes in external costs must satisfy the requirements of 47 C.F.R. § 76.922(d)(2) and (3).

The FCC Form 1240 allows a cable operator to annually update its basic service tier programming rates to account for inflation, changes in external costs, and changes in the number of regulated channels. In order that rates be adjusted on FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels,

the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(ii)(A); 47 C.F.R. § 76.922(e)(iii)(A). Although cable operators may project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(ii)(A).

III. DISCUSSION AND ANALYSIS

In reviewing the pending forms, the Cable Division has determined that some adjustments are necessary. In this Order, we address three issues: (1) Adelphia's methodology for computing its charges for additional outlet installations, (2) a channel movement adjustment on the Falmouth FCC Form 1240, and (3) converter repair costs in the former Harron communities.

A. Charges for Additional Outlet Installations

This issue concerns Adelphia's calculation of additional outlet ("A/O") charges. Additional outlet charges are imposed on subscribers who receive cable service at more than one television set.

The Cable Act gave specific directions to the FCC and cable operators concerning additional outlet charges: "[t]he regulations prescribed by the [FCC] under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for ... (B) installation and monthly use of connections for additional television receivers." 47 U.S.C. § 543(b)(3); see also 47 C.F.R. § 76.923(h). The law therefore permits cable operators to impose two types of additional outlet charges on subscribers: a one-time installation charge when the additional outlet is installed, and a recurring monthly rate on the subscriber's bill. Adelphia currently imposes both an installation charge and a monthly additional outlet rate.

In response to the Cable Division's request, Adelphia explained the derivation of its two additional outlet charges. Adelphia replied that its total costs incurred are \$58.46 when an additional outlet is installed at the same time as the initial installation ("A/O at initial installation") and \$68.81 when the additional outlet is installed separately, after the subscriber is receiving cable service ("separate A/O installation") (RR-CATV-5). To calculate its additional outlet charges, Adelphia uses the following methodologies.

Adelphia's installation charge recovers costs associated with the hours for installation labor. Adelphia determined its installation charge by multiplying the hourly service charge

(“HSC”) of \$41.39 by the hours required for installation (id.).⁴ Adelphia lists the times needed for installation as 30 minutes for an A/O at initial installation and 45 minutes for a separate A/O installation (id.). Thus, the Company proposed a maximum permitted rate (“MPR”) of \$20.70 for an A/O at initial installation and an MPR of \$31.05 for a separate A/O installation (Exh. Adelphia-2, FCC Form 1205, at 7, Lines 1.b.3 and 1.b.4). Adelphia has selected actual installation charges of \$20.00 for an A/O at initial installation, and \$31.00 for a separate A/O installation (id.).

The Company’s costs not recovered through its proposed installation fees are those associated with travel time and for materials (RR-CATV-5). Adelphia claims that travel time for additional outlet installations includes 20 minutes for one-way travel between Adelphia’s office and a subscriber’s home or between two subscribers’ homes, and an additional 20 minutes for “customer education or other matters” (RR-CATV-8). Adelphia multiplies its travel time by the HSC, to arrive at a “truck roll (trip charge)” of \$27.73 (RR-CATV-5). The Company recovers its cost for materials (\$10.03) and part of its travel time by capitalizing \$20.00, which is recovered as part of its monthly additional outlet rate (Exh. Adelphia-2, FCC Form 1205, at 5, Step E).⁵ The proposed MPR for the monthly rate is \$0.90; Adelphia has chosen to charge \$0.85 per month (id.). The additional outlet capitalized costs represent 25 percent of the monthly rate; the remainder consists of maintenance and service costs related to additional installations (id.).

The Cable Division has several concerns regarding the Company’s methodologies. However, the record lacks sufficient evidence to determine what effect, if any, these adjustments would have on subscribers’ rates. Moreover, because the Company is not charging the full proposed MPR, we will approve its additional outlet charges at this time. Nevertheless, the Company is directed to adjust its methodologies in future filings as described below. The Cable Division will review the adjusted methodology in the next rate proceeding.

First, with respect to travel time, Adelphia includes time for “customer education or other matters” (RR-CATV-8). This time is not related to travel to a subscriber’s residence, but rather relates to the time associated with the installation itself. We conclude that Adelphia’s time for “customer education or other matters” should be excluded from

⁴ Adelphia’s HSC of \$41.39 is calculated on its FCC Form 1205. See Exh. Adelphia-2, FCC Form 1205, at 4, Step A.

⁵ This capitalization flows into the computation of the monthly charge through FCC Form 1205, Schedule C, “Other Equipment.” Adelphia reports, on Line C, 50,776 additional outlets in service. When multiplied by \$20.00, this results in the gross book value on Line D of \$1,015,520 (Exh. Adelphia-2, FCC Form 1205, at 3). This number, after adjustments for depreciation and taxes, becomes an element of the calculation of the monthly additional outlet rate on Step E, Line 29 (id. at 3, 5).

the travel time component and included in the Company's calculation of the time associated with installation.

Second, with respect to the remaining travel time, Adelphia should not capitalize the associated costs for two reasons. We note that for an A/O at initial installation, Adelphia's filings do not allocate any portion of the trip charge between the initial installation and the additional installation (RR-CATV-5). The Company also does not distinguish between an A/O at initial installation and a separate A/O installation (*id.*). Because the installer is already incurring a trip charge to perform the initial installation, billing a trip charge for the A/O at initial installation leads to two trip charges for the same trip. The Cable Division finds that no part travel time should be assigned to the A/O at initial installation. Adelphia may assign travel time only to separate A/O installations.

Additionally, the Cable Division finds that travel time assigned to separate A/O installations should be included within the "hours needed for the installation." This conclusion is based upon the applicable rate regulations, 47 C.F.R. § 76.923(e) and (h), and on FCC and Cable Division precedent:

[A] cable operator shall establish an Equipment Basket to which it will assign the direct costs of service installation, additional outlets, and leasing and repairing equipment. ... For installation charges, the cable operator must elect a uniform installation charge that is calculated based upon either: (1) the HSC [hourly service charge] times the person hours of the visit; or (2) the HSC times the average hours spent per installation visit.

In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Docket 92-266, FCC 93-177, 8 FCC Rcd 5631 (released May 3, 1993), at 5815, ¶ 295; 5817, ¶ 296.

The Cable Division first adopted this position in our rate orders in 1994; see Century Berkshire Cable Corp., Great Barrington, Y-93 (1994) ("Century"); Inland Cable Communications, Rehoboth, Y-93 (1994) ("Inland"); New England Cablevision of Massachusetts, Inc., Amesbury, Y-93 (1994) ("New England"). We concluded:

[I]t is appropriate to include travel time within the definition of an installation "visit". From an accounting perspective, the [Cable Division] believes that it is necessary to include travel time associated with installations and service calls, if an operator is expected to recover its "direct" costs for installation and service costs. The [Cable Division] therefore, finds it appropriate to account for reasonable travel time directly related to the installation or maintenance of subscriber equipment. This time, where reasonable, would be considered a direct expense.

Century at 5-6; see also Inland at 9; New England at 10.

The Cable Division today reaffirms its 1994 rulings. The travel time the cable operator staff spends on a separate A/O installation is not a general expense, but an expense that is directly related to installation activity. The travel time should, therefore, be included with the other time required to complete the installation.

B. Falmouth Channel Movement

In response to a question from the Cable Division, Adelphia explained at the public hearing that a projected negative \$ 0.04 channel movement reported on the previous Falmouth FCC Form 1240 had not occurred. Adelphia presented a revised Falmouth FCC Form 1240 for the current proceeding that removed the \$ 0.04 adjustment and updated the inflation factor for the projected period (Exh. Adelphia-9, revised).⁶ These two adjustments increase the Falmouth BST MPR from \$10.08 to \$10.27 (id.). However, Adelphia did not alter Line I10, the "Operator Selected Rate," which remains at \$ 10.08 (id.), and thus subscribers' BST rates are not affected. The Cable Division accepts the revised Falmouth FCC Form 1240 as filed.

C. Converter Repair Costs in the Former Harron Communities

The Cable Division asked Adelphia to explain the increase in converter repair costs between Harron's calendar year 1996 and calendar year 1997 FCC Form 1205s (RR-CATV-3; see Exh. Adelphia-1, FCC Form 1205s at 5, Line 20). In response to a Cable Division request, Adelphia stated that Harron's average repair time for the maintenance of converters had increased from 1.5 hours per service repair call in 1996 to 2.01 hours per service repair call in 1997 (RR-CATV-3, Attachment B). Adelphia explained that "[c]onverter repair costs increased as a result of the aging of the converter pool. Harron had previously elected to purchase refurbished converters instead of adding new converters to the converter pool, and, therefore, the general age of this class of assets continued to increase" (RR-CATV-1).

The Cable Division approves the repair costs and times associated with these units as submitted on its pending forms. However, the Cable Division will continue to monitor

⁶ Adelphia's updated inflation factor is consistent with the policy of the Cable Division and the FCC requiring an operator to update inflation data when making other adjustments to the forms. Time Warner Cable, Acushnet et al., Y-97 INC (1998) at 1; Cox Communications, Inc., Blackstone et al., Y-98 INC (1999) at 4; Cencom Cable Income Partners II, L.P. (Jasper, TX), FCC 97-205, 12 FCC Rcd 22295 (released June 13, 1997) at ¶ 11. In the present case, the current FCC inflation factor increased from 1.0078 on the original Falmouth FCC Form 1240 to 1.0135 on the revised FCC Form 1240. Compare Exh. Adelphia-9 and Exh. Adelphia-9, revised at 2, Line C5; see also FCC: Inflation Adjustment Figures for Cable Operators Using FCC Forms 1210 and 1240 Now Available, DA 99-2072 (released October 4, 1999).

the repair costs and times associated with the converters in the former Harron communities to insure that they are fully supported, reasonable, and in compliance with federal rate regulations.

IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Form 1205s as filed on January 15, 1999 and March 11, 1999 for Abington, Bourne, Halifax, Pembroke, Plympton, Rockland and Sandwich.

Further, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Form 1205 as filed on April 30, 1999 for Adams, Aquinnah, Cheshire, Clarksburg, Duxbury, Edgartown, Falmouth, Kingston, Marshfield, North Adams, Oak Bluffs and Plymouth.

Further, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Form 1210s as filed on March 11, 1999 for Abington, Bourne, Halifax, Pembroke, Plympton, Rockland and Sandwich.

Further, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Form 1240s as filed on April 30, 1999 for Adams, Aquinnah, Cheshire, Clarksburg, Duxbury, Edgartown, Falmouth, Kingston, Marshfield, North Adams, Oak Bluffs and Plymouth.

The attached schedule provides the current and maximum permitted basic service tier programming and equipment rates for each community.

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

**Alicia C. Matthews
Director**

APPEALS

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 1997, c. 164, § 273. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within 7 days of the filing of the initial petition for appeal.