



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

RATE ORDER

CTV 03-5

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240, 1205 and 1235 filed by Adelphia Cable Communications, Inc.

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**APPEARANCES:** Leslie J. Brown  
Vice President for Law and Public Policy  
200 Minuteman Road  
Andover, MA 01810  
FOR: Adelphia Cable Communications, Inc.  
Petitioner

Christine Joy  
Chairman, Board of Selectmen  
P.O. Box 239  
Plympton, MA 02367  
FOR: THE TOWN OF PLYMPTON  
Intervenor

## I. INTRODUCTION

On November 26, 2003, Adelphia Cable Communications, Inc.<sup>1</sup> (“Adelphia” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Forms 1240 for the communities subject to rate regulation that Adelphia serves in Massachusetts.<sup>2</sup> This filing was accompanied by Adelphia’s nationwide FCC Form 1205 with proposed equipment and installation rates. In addition, Adelphia filed FCC Forms 1235, “Abbreviated Cost of Service Filing for Cable Network Upgrades,” for 19 of its regulated communities. Pursuant to 47 C.F.R. § 76.933(g), Adelphia implemented any rate changes resulting from its FCC Forms 1240, 1205 and 1235 filings on April 1, 2004 (Tr. 24).

The Cable Division held a public and evidentiary hearing in its Boston office on June 2, 2004. The Town of Plympton intervened in this proceeding. The evidentiary record consists of Adelphia’s rate forms admitted as Adelphia Exhibits 1 through 26, Adelphia’s responses to information requests admitted as Cable Division Exhibits 1 through 21, and Adelphia’s responses to record requests issued by the Cable Division and the Town of Plympton.

## II. REVIEW OF FCC FORMS 1240

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<sup>1</sup> The formal license held by Adelphia Cable Communications, Inc., in each of its Massachusetts communities is under one of the following names: Adelphia Cablevision Corp.; Century Berkshire Cable Corp.; Chelsea Communications, L.L.C.; FrontierVision Cable New England, Inc.; Martha’s Vineyard Cablevision, L.P., and Mountain Cable Company, L.P.

<sup>2</sup> The regulated communities are listed on the attached Rate Schedule.

A. Standard of Review and Burden of Proof

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which a cable operator must calculate its rates. The FCC Form 1240 allows a cable operator to annually update its BST 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 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 such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. §§ 76.922(e)(2)(ii)(A) and 76.922(e)(2)(iii)(A). Cable operators may also project for increases in franchise related costs (“FRCs”) to the extent they are reasonably certain and reasonably quantifiable; however, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A).

The standard under which the Cable Division must review rate adjustments on the FCC Form 1240 is found in the FCC’s rate regulations. Specifically, the rate regulator shall assure that the rates comply with the requirements of Section 623 of the Communications Act of 1934, as amended. 47 U.S.C. § 543; 47 C.F.R. §§ 76.922, 76.923, and 76.930. The Cable Division may accept as in compliance with the statute BST rates that do not exceed the “Subsequent Permitted Per Channel Charge” as determined by federal regulations. See 47 C.F.R. § 76.922(a). In addition, the Cable Division shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 U.S.C. § 543; 47 C.F.R. §§ 76.937(d) and (e), and 76.942.

The burden of proof is on the cable operator to demonstrate that its proposed rates for

BST programming comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; 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, at 5716, ¶ 128 (1993) (“Rate Order”); see also 47 C.F.R. § 76.937(a).

B. Discussion and Analysis

Upon review of Adelphia’s FCC Form 1240 filings, we find that the Company has established that its proposed BST maximum permitted rates (“MPRs”) in all but seven communities are reasonable and in compliance with applicable statutes and regulations. Adelphia proposed BST MPRs for seven communities on three FCC Form 1240 filings. The franchises for these seven communities had been acquired by Adelphia from Harron Cablevision. The forms combined neighboring communities: Abington and Rockland (Exh. Adelphia-1); Bourne and Sandwich (Exh. Adelphia-5), and Halifax, Pembroke and Plympton (Exh. Adelphia-11). Adelphia allocated its total local origination expenses among the three forms, based upon the number of subscribers it served in the communities included on the form (Exh. CTV-11; Exhs. Adelphia-1,-5,-11, at exhibit X). Each amount so allocated was included as an FRC on the form’s Worksheet 7, and therefore included in the calculation of the combined communities’ BST rate (Exhs. Adelphia-1,-5,-11, at Worksheet 7, Projected Period, Line 707).

In both Rockland and Sandwich, the community operates a public, educational and governmental (“PEG”) access studio, which is funded by a percentage PEG access fee added to subscribers’ bills, amounting to 5 percent of the bill in Rockland and 3 percent in Sandwich

(Exh. CTV-11; RR-CTV-3, exhibit 1). Thus, in Rockland and Sandwich, subscribers obtain PEG access programming through their own community-operated PEG access studios, not from local origination studios operated by Adelphia. However, because each community is included in a combined filing with a neighboring community that receives local programming from Adelphia, Adelphia proposed to include the costs of the local origination programming as FRCs in the BST rate calculated on the combined form.<sup>3</sup> Since these filings are combined, each community's BST rates include local origination costs, even if a separate PEG access fee is also charged in a community.<sup>4</sup> The issue therefore is the appropriateness of Adelphia's allocation of its local origination costs, particularly where subscribers also pay a PEG access fee.

Adelphia noted FRCs are booked at a cost center level, and thus argued that the costs should be equivalent among all communities since they are simply allocated to each franchise based on the number of subscribers in each community (RR-CTV-4). Adelphia also noted that it had, in the past, used this allocation method and that it "hopes to maintain the historical approach to consolidated filings for these areas due to the associated issues with developing stand-alone filings" (*id.*)

There is no statutory authority for consolidated FCC Form 1240 filings, unlike the FCC Form 1205, where Congress has explicitly authorized consolidated filings.

47 U.S.C. § 543(a)(7). Instead, the FCC in its cost allocation rules specifically states that "in

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<sup>3</sup> Meanwhile, the five communities that are actually served by Adelphia's local origination studio benefit from paying costs that have been allocated over seven communities rather than five.

<sup>4</sup> This situation does not arise in Adelphia's third filing, for Halifax, Pembroke and Plympton, because none of these communities operates its own studio, and all receive local origination programming from Adelphia (RR-CTV-3, exhibit 1).

all events, cable operators shall identify at the franchise level their costs of franchise requirements, franchise fees, local taxes and local programming.” 47 C.F.R. § 76.924(c).

This provision specifically applies to Adelphia’s filings, as the FCC states that the requirements of § 76.924 “are applicable for purposes of rate adjustments on account of external costs.”

47 C.F.R. § 76.924(a). Under 47 C.F.R. § 76.924(c), Adelphia would be permitted to file a consolidated FCC Form 1240 that establishes BST rates for more than one franchise or community, only if the franchises had identical per-subscriber franchise requirements and franchise fees. In such a situation, the same level of costs would be identified for each community in the filing, and there would be no consequences to subscribers from a consolidated form. Since the four individual franchises at issue do not have identical per-subscriber franchise requirements, Adelphia may not file consolidated forms in the manner proposed herein.<sup>5</sup>

With respect to the Company’s claim that these filings reflect past practice, the current filings are distinguishable from previous Adelphia rate filings that have won our approval.

Prior to 2003, there was no indication on the Company’s filings that it had added a percentage

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<sup>5</sup> We recognize that as cable operators consolidate systems, there is a benefit both in terms of reduced administrative burden and customer confusion by consolidating rate forms and unifying rates. If Adelphia wished to continue filing consolidated filings, it might consider the methodology suggested by the FCC in its Uniform Rate Setting Methodology Report and Order: “[i]n the event that a deviation based on PEG access costs or other external costs (including franchise-related external costs) is significant, we would consider a requirement that an operator’s uniform rates be determined exclusive of such costs; in which case the operator likely would be permitted to add these costs onto the uniform rate on a franchise-by-franchise basis.” In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation, Uniform Rate-Setting Methodology, CS Docket No. 95-174, FCC 97-86, at 14, ¶ 33 (1997).

of PEG access fee to subscribers' bills. Only in 2003, did the Company notify us of its policy decision to pass through these costs to subscribers. See Cable Division Bulletin, Adelpia Franchise Fee, April 23, 2003. Adelpia's current rate filing, made in November 2003, is the Company's first filing which reflects the recovery of both franchise fees and FRCs from the subscribers of Rockland and Sandwich.<sup>6</sup>

As with any costs, we find that Adelpia may allocate its costs of local origination only to subscribers whose franchises receive its benefits. Accordingly, we direct Adelpia to submit separate FCC Form 1240 filings for Abington, Bourne, Rockland and Sandwich, and a revised FCC Form 1240 filing for Halifax, Pembroke and Plympton. No Adelpia local origination costs should appear on the Rockland and Sandwich forms, while the total local origination costs should be allocated only among subscribers in Abington, Bourne, Halifax, Pembroke and Plympton. To the extent that the revised forms produce a BST MPR that is less than the rate the Company is currently charging in any of these communities, the Company is directed to refund any such overcharge to subscribers. If such a case exists, the Company is further directed to submit a filing identifying the community, the amount of the overcharge and outlining a plan to implement the refund by September 3, 2004.

### III. REVIEW OF THE FCC FORM 1205

The FCC Form 1205 establishes rates for installations and equipment, such as

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<sup>6</sup> We are concerned that the Company may have recovered costs of its local origination programming from subscribers who did not enjoy its benefits. However, since no party intervened to raise the issue, the Cable Division could not have discovered the improper allocation method until the present filing. This situation highlights the importance of municipal participation in our rate proceedings.

converters and remote controls, based upon actual capital costs and expenses. Instructions to FCC Form 1205, at 7, 12-13. The FCC Form 1205 is prepared on an annual basis using information from the cable operator's previous fiscal year. Id. at 2. Subscriber charges established by the FCC Form 1205 shall not exceed charges based on actual costs as determined in accordance with the FCC's regulatory requirements. 47 C.F.R. § 76.923(a)(2). As with the FCC Form 1240, the burden of proof is on the cable operator to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; Rate Order at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

Based on our review, we find that the FCC Form 1205 filed by Adelphia establishes rates for equipment and installations that are reasonable and in compliance with applicable law.

#### IV. REVIEW OF THE FCC FORMS 1235

Cable operators making significant upgrades to their systems are allowed to recover their upgrade costs, by adding an upgrade surcharge to their rates calculated through an abbreviated cost of service showing. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, and Adoption of a Uniform Accounting System for Provision of Regulated Service: Report & Order and Further Notice of Proposed Rulemaking, MM Docket No. 93-215 and CS Docket No. 94-28, FCC 94-39, 9 FCC Rcd 4527, at 4674-4676 (1994) ("Cost Order"); see 47 C.F.R. § 76.922(j). Pursuant to the Cost Order, the FCC developed FCC Form 1235 as an abbreviated cost-of-service filing that enables cable operators to justify rate increases based upon significant capital expenditures used to improve regulated cable services. Id. at 4676; FCC Form 1235.



Instructions for Completion of Abbreviated Cost of Service Filing for Cable Network Upgrades (February 1996) (“Instructions to FCC Form 1235”) at 1. The FCC determined that a cable operator who makes significant upgrades to its systems should be allowed to recover the costs of the upgrade by adding a network upgrade surcharge to its rates otherwise determined pursuant to FCC Form 1240 methodologies. Id. An operator, therefore, is permitted to set a BST rate based on two components. The first component is the benchmark rate, i.e., the rate established by FCC Form 1240. The second component is the network upgrade surcharge. The sum of these two components will yield the maximum allowable rate that may be charged to subscribers. Id.; 47 C.F.R. § 76.922(j)(5). Thus, the network upgrade surcharge is a separate calculation on FCC Form 1235, which, if approved, may be added to the overall BST MPR. See FCC Form 1235, page 3, Part III, Line 4, and Instructions to FCC Form 1240, at 9.

A. Standard of Review

The FCC established five criteria that a network upgrade must satisfy before a cable operator may recover upgrade costs through the FCC Form 1235. See Cost Order at 4675-4676, ¶¶ 287-289; See also Public Notice, Cable Services Bureau Develops System Upgrade Form, DA 95-1893, 11 FCC Rcd 5554 (1995). The same standards apply to both FCC Forms 1235 filed for pre-approval and for final approval. Marcus Cable Partners, L.L.C., DA 00-1071, ¶¶ 8-12 (2000) (pre-approval); Cox Communications San Diego, Inc., Chula Vista, DA 98-1536, 13 FCC Rcd 17653, at 17655-17659, ¶¶ 6-15 (1998) (“Cox”) (final approval). First, the upgrade must be significant and require added capital investment, such as the expansion of bandwidth capacity and conversion to fiber optics, and for system rebuilds.

Cost Order at 4675, ¶ 287; see Instructions to FCC Form 1235, at 5: FCC Form 1235, at 1.

Second, the upgrade must actually benefit subscribers of regulated services, through improvements in those services. Cost Order at 4675, ¶ 287; 47 C.F.R. § 76.922(j)(1). Third, the upgrade must be complete and providing benefits to subscribers of regulated services before the operator may assess the network upgrade surcharge. Cost Order at 4675, ¶ 288; 47 C.F.R. § 76.922(j)(2). Fourth, cable operators seeking an upgrade rate increase have the burden of demonstrating the amount of the net increase in costs, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in regulated revenues and expected economies of scale. Cost Order at 4675-4676, ¶ 289; 47 C.F.R. § 76.922(j)(3). Fifth, the operator must allocate the net increase in costs in conformance with the FCC's cost allocation rules for cost-of-service showings, to assure that only costs allocable to regulated services are imposed on subscribers to those services. Cost Order at 4676, ¶ 289; 47 C.F.R. § 76.922(j)(4).

B. Discussion and Analysis

1. The Amesbury System

Adelphia submitted an FCC Form 1235 for the Amesbury system: comprised of Amesbury, Merrimac and Salisbury (Exh. Adelphia-22). At the hearing, Adelphia stated that the costs on this FCC Form 1235 were associated with connecting the Amesbury system with another headend (Exh. CTV-18; Tr. at 28, 29). The connection of the Amesbury system to the headend did not increase the system's capacity of 750 megahertz (MHz) (Exh. CTV-16; Tr. at 28).

Because there was no increase in the Amesbury system's megahertz capacity, the

Company conceded that its FCC Form 1235 would not qualify as an upgrade filing (Tr. at 28-29). The Company thereupon requested that the Amesbury FCC Form 1235 be withdrawn from consideration (Tr. at 29-30). The Cable Division grants the Company's request to withdraw the Amesbury FCC Form 1235.

We determined, above, that Adelphia's FCC Form 1240s filed for Amesbury, Merrimac and Salisbury are reasonable and in accordance with applicable statutes and regulations. However, because Adelphia added a network upgrade surcharge to these communities' rates, the actual BST rate Adelphia is charging in each community is greater than the approved MPR for that community (Exhs. Adelphia-2, -15, -18, at Line I9; Tr. at 9).<sup>7</sup> Accordingly, we direct Adelphia to reduce its BST rates in these communities to the approved MPRs by the next billing cycle. Furthermore, we direct Adelphia to refund to subscribers any related overcharges. The Company should submit a plan by which refunds will be implemented by September 3, 2004.

## 2. The Pre-Approval Filings

The FCC does not require a cable operator to delay recovery of costs until the entire upgrade is complete. Instead, the FCC allows cable operators to file an FCC Form 1235 for pre-approval, using projected upgrade costs. Instructions to FCC Form 1235, at 2. A pre-approval filing may be made at any time before the services become available to subscribers, using projected upgrade costs. Id. The pre-approval upgrade surcharge may be

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<sup>7</sup> For Amesbury, the proposed BST MPR is \$10.17, while the actual rate charged is \$10.50; for Merrimac, the proposed BST MPR is \$9.66, while the actual rate charged is \$10.00; for Salisbury, the proposed BST MPR is \$10.20, while the actual rate charged is \$10.50 (id.).

charged to subscribers as soon as their portion of the cable system has been upgraded and providing upgraded services. Id. If the pre-approval option is exercised, the cable operator must again file its FCC Form 1235 for final approval. Id. This second filing will primarily entail the substitution of actual costs for projected costs. Id.

Adelphia has filed four FCC Forms 1235 for pre-approval (Exhs. Adelphia-21, -23, -24, -26). These include individual filings for Falmouth (Exh. Adelphia-23), and Marshfield (Exh. Adelphia-26), and two combined filings: one for the seven communities of Abington, Bourne, Halifax, Pembroke, Plympton, Rockland and Sandwich (the “Abington systems”) (Exh. Adelphia-21); and the second for Great Barrington, Lee, Lenox, Sheffield and Stockbridge (the “Great Barrington system”) (Exh. Adelphia-24).

We analyze these filings under the five criteria identified above. With respect to the first criterion, for all four filings, the Company certified that the upgrade satisfies the FCC’s minimum required technical specifications (Exhs. Adelphia-21, -23, -24, -26, at 2; see Instructions to FCC Form 1235, at 5). In particular, Adelphia stated that it upgraded its Falmouth system from 450 MHz to 750 MHz (Exh. CTV-16). Its Great Barrington system was upgraded from 450 MHz to 860 MHz, and the Abington systems and Marshfield were upgraded from 550 MHz to 860 MHz (id.). The upgrades are projected to require \$42.5 million in capital investment,<sup>8</sup> and involve the installation of 1,434 miles of rebuilt distribution plant.<sup>9</sup> Based on

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<sup>8</sup> The projected capital investments in the upgrades are: \$20,659,382 in the Abington systems, \$7,641,432 in Falmouth, \$9,570,992 in the Great Barrington system, and \$4,632,634 in Marshfield (Exhs. Adelphia-21, -23, -24, -26 at 7).

<sup>9</sup> The projected length of the plant to be rebuilt in the upgrades is 555.78 miles in the Abington systems; 357.56 miles in Falmouth, 332.16 miles in the Great Barrington system, and 188.93 miles in Marshfield (Exhs. Adelphia-23, -24, -26 at 7; Exh.

these facts, we find that Adelphia's upgrades are significant, and have satisfied the first criterion of the FCC's test.

For the second criterion, "[s]ubscribers are presumed to benefit from improved service quality and reliability when an operator meets the minimum technical specifications, and no showing of additional channels of service is required." Cox at 17656, ¶ 9. No party submitted any evidence to rebut this presumption. Therefore, we find that Adelphia's upgrades satisfy the second criterion, by benefitting regulated subscribers through improvements in services.

With respect to the third criterion, Adelphia stated that even though these four FCC Forms 1235 had been filed under the FCC's pre-approval option, its upgrades have all been fully activated (Tr. at 23-24). The Company explained that the project's accounting has not yet been closed, and there are still project costs that are being added to the accounting (Tr. at 24). These additional costs would be added to the final filings (id.). Since the upgrades are complete, we conclude that the recovery of the approved costs assessed with the upgrades is appropriate.

The fourth criterion requires the cable operator to provide specific information justifying its proposed increase. The FCC Form 1235 has been designed to present this information, which includes depreciation expenses, changes in operating costs, and changes in revenue. FCC Form 1235, at 4-6. The only upgrade costs Adelphia has included on its FCC Forms 1235 are for its distribution facilities; no other costs (such as for a headend or maintenance facilities) have been included (Exhs. Adelphia-21,-23,-24,-26, at 4, 8). Adelphia seeks to

recover its expenditures by depreciating its costs over 12 years, the useful life of its distribution facilities (*id.* at 4, 8). This 12-year period is appropriate, as the FCC determined, after a study of cost-of-service filings, that 12 years was the median economically useful life reported for distribution facilities. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Adoption of Uniform Accounting System for Provision of Regulated Cable Service: Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, MM Docket No. 93-215, FCC 95-502, 12 FCC Rcd 2219, at 2316-2318 (1996). The Cable Division finds that Adelphia has adequately provided all of the information requested by the form, and properly calculated the amount of its net increase in costs for each upgrade.

With respect to the fifth criterion, a key element in the calculation of the permitted FCC Form 1235 upgrade segment is the number of channels on the BST as a percentage of the total number of analog channels on the cable system. This equation determines the percentage of upgrade costs to be allocated to the BST. The Cable Division has specifically approved an allocation of upgrade costs based upon the number of channels. Adelphia Communications Corporation, CTV 02-3 (2003); Time Warner Cable, Y-00 INC, Y-00 EQU, Y-00 UPG (2000); Adelphia Cable Communications, Y-98 INC, Y-98 EQU (1999).

In the Abington systems and Marshfield, the BST will carry 22 of the 110 post-upgrade analog channels, and is allocated 20 percent of the upgrade costs (Exhs. Adelphia-21,-26, at 7). The remaining upgrade costs are allocated to the cable programming services tier ("CPST") and to other unregulated services (*id.*). In Falmouth, the BST will carry 21 of the 110 post-upgrade analog channels, and is allocated 19.09 percent of the upgrade costs (Exh. Adelphia-

23, at 7). We find that Adelphia has allocated the costs of its upgrades between the BST, CPST and other non-regulated services, based upon the percentage of post-upgrade channels carried on the BST. Thus, Adelphia has properly ensured that only costs allocable to regulated services are imposed on subscribers to those services.

In Great Barrington, the Company's FCC Form 1235 demonstrated that the BST carries 30 channels, and that 27.27 percent of the upgrade's total costs are allocated to the BST (Exh. Adelphia-22, at 7). However, according to the FCC Form 1240, the BST only carries 21 channels (Exh. Adelphia-10, at Worksheet 3-Markup Method, Projected Period, Basic Tier). The Company explained the discrepancy by claiming that when it prepared the FCC Form 1235, there were 30 BST channels on the Great Barrington BST (Exh. CTV-20). Subsequently, the Company removed several channels from the BST, leaving only 22 BST channels (*id.*). Adelphia submitted a revised FCC Form 1235 for the Great Barrington system, which reported 22 channels on the BST, and allocated 20 percent of the upgrade's cost to the BST (RR-CTV-5). This revision reduces the Great Barrington system's permitted network upgrade surcharge from \$6.17 to \$4.53 (*id.*). We find that Adelphia, in its revised form, has properly included for recovery only those costs allocable to regulated services.

We conclude that Adelphia is eligible for recovery of costs associated with its upgrades in the Abington systems, Falmouth, the Great Barrington system, and Marshfield. We conclude that the FCC Forms 1235 filed for pre-approval in the Abington systems, Falmouth, and Marshfield, are in compliance with applicable law, and that the upgrade surcharges proposed therein are reasonable. We further conclude that the revised pre-approval FCC Form 1235 submitted for the Great Barrington system is in compliance with applicable law, and that

the upgrade surcharge proposed therein is reasonable. Adelphia will be required to file FCC Forms 1235 for final approval, for the Abington systems, Falmouth, the Great Barrington system and Marshfield.

3. Kingston and Plymouth - Request for Final Approval

In our previous rate proceeding for Adelphia, we pre-approved the Company's Form 1235 for Kingston and Plymouth. Adelphia Communications Corporation, CTV 02-3, at 2-6 (2003) ("2003 Order"). Specifically, in that proceeding, we found that Adelphia's method of calculating its system upgrade surcharge satisfied the FCC's five upgrade criteria. Id. at 6. In this proceeding, Adelphia has filed a revised Kingston and Plymouth FCC Form 1235 for final approval (Exh. Adelphia-25). The final FCC Form 1235 filed for Kingston and Plymouth differs from the pre-approval form, in that the total distribution plant mileage of the upgrade has increased from 509 miles to 646.66 miles in length, and that the total cost of the upgrade is \$10,984,883, instead of the \$8.5 million projected in the pre-approval form. 2003 Order at 5; See also, Exh. Adelphia-25, at 7. This change increases the network upgrade surcharge from \$1.34 to \$1.67. 2003 Order at Rate Chart; See also, Exh. Adelphia-25, at 2.

The Company did not change other aspects of the pre-approval FCC Form 1235 filing when it prepared its final filing. The final form, like the pre-approval form, includes only the costs of the upgraded distribution facilities, and depreciates these costs over the same 12-year life that we approved in the 2003 Order. 2003 Order at 5; See also, Exh. Adelphia-25, at 8. The final form also reports 22 post-rebuild BST channels, and like the pre-approval form, allocates 20 percent of the total costs of the upgrade to the BST. 2003 Rate Order at 6; See also, Exh. Adelphia-25, at 8. The final form reports, as did the pre-approval form, that the



Kingston and Plymouth system has been rebuilt to a capacity of 750 MHz. Id. at 5; Exh. Adelpia-25, at exhibit 4. The final form also reports that the upgrade has been completed, and that subscribers began receiving services during May 2002 (Exh. Adelpia-25, at 2).

We conclude that the final FCC Form 1235 filed for Kingston and Plymouth satisfies the FCC's five criteria, and that the Company is eligible for the recovery of costs associated with its upgrade in Kingston and Plymouth. We further find that the FCC Form 1235 filed for Kingston and Plymouth is reasonable and in compliance with applicable law, and that the upgrade surcharge proposed therein is reasonable.

#### 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, Adelpia's FCC Forms 1240 as filed on November 26, 2003, for Adams, Amesbury, Aquinnah, Cheshire, Clarksburg, Duxbury, Edgartown, Essex, Falmouth, Gloucester, Great Barrington, Kingston, Lee, Lenox, Manchester-by-the-Sea, Marshfield, Merrimac, North Adams, Oak Bluffs, Plymouth, Rockport, Salisbury, Sheffield and Stockbridge.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Adelpia's FCC Forms 1240 as filed on November 26, 2003, for Abington, Bourne, Halifax, Pembroke, Plympton, Rockland and Sandwich. The Cable Division directs Adelpia to resubmit its FCC Forms 1240 for these communities, and refund plans where necessary, in compliance with this Rate Order, on or before September 3, 2004.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelpia's

FCC Form 1205 as filed on November 26, 2003, for Abington, Adams, Amesbury, Aquinnah, Bourne, Cheshire, Clarksburg, Duxbury, Edgartown, Essex, Falmouth, Gloucester, Great Barrington, Halifax, Kingston, Lee, Lenox, Manchester-by-the-Sea, Marshfield, Merrimac, North Adams, Oak Bluffs, Pembroke, Plymouth, Plympton, Rockland, Rockport, Salisbury, Sandwich, Sheffield and Stockbridge.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Forms 1235 as filed on November 26, 2003, for Abington, Bourne, Falmouth, Halifax, Kingston, Marshfield, Pembroke, Plymouth, Plympton, Rockland and Sandwich. The Cable Division hereby rejects the FCC Form 1235 filed on November 26, 2003, for Great Barrington, Lee, Lenox, Sheffield and Stockbridge. The Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Form 1235 submitted as RR-CTV-5 for Great Barrington, Lee, Lenox, Sheffield and Stockbridge.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelphia's withdrawal from consideration of its FCC Form 1235 filed on November 26, 2003, for Amesbury, Merrimac and Salisbury.

The Cable Division further directs Adelphia to submit a refund plan for Amesbury, Merrimac and Salisbury, in compliance with this Rate Order, on or before September 3, 2004.

The Cable Division further directs Adelphia to comply with all other directives contained in this order.

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

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

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

Issued: August 23, 2004

## **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. 2002, c. 45, ' 4. 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 seven days of the filing of the initial petition for appeal.