COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY
Cable Television Division

In the Matter of	)	Docket No. CTV 02-3
Adelphia Communications	)	Date Issued: March 25, 2003
Corporation	)	
	)	Abington, CUID MA 0225
Adelphia Cablevision	)	Adams, CUID MA 0001
Associates, L.P.	)	Amesbury, CUID MA 0049
	)	Aquinnah, CUID MA 0275
Adelphia	)	Bourne, CUID MA 0247
Cablevision Corp.	)	Cheshire, CUID MA 0002
	)	Clarksburg, CUID MA 0003
Campbell	)	Duxbury, CUID MA 0302
Communications, L.L.C.	)	Edgartown, CUID MA 0273
	)	Essex, CUID MA 0153
Century Berkshire	)	Falmouth, CUID MA 0072
Cable Corp.	)	Gloucester, CUID MA 0136
	)	Great Barrington, CUID MA 0008
Martha's Vineyard	)	Halifax, CUID MA 0229
Cablevision, L.P.	)	Kingston, CUID MA 0159
	)	Lee, CUID MA 0009
Mountain Cable	)	Lenox, CUID MA 0010
Company	)	Manchester-by-the-Sea, CUID MA 0154
	)	Marshfield, CUID MA 0191
New England Cablevision	)	Merrimac, CUID MA 0165
of Massachusetts, Inc.	)	North Adams, CUID MA 0004
	)	Oak Bluffs, CUID MA 0272
all d/b/a	)	Pembroke, CUID MA 0228
Adelphia Communications	)	Plymouth, CUID MA 0123
Corporation	)	Plympton, CUID MA 0245
	)	Rockland, CUID MA 0224
	)	Rockport, CUID MA 0137
For a Determination	)	Salisbury, CUID MA 0162
of Cable Television Rates	)	Sandwich, CUID MA 0246
	)	Sheffield, CUID MA 0346
	)	Stockbridge, CUID MA 0011

RATE ORDER

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I. INTRODUCTION

On March 26, 2002, Adelphia Communications Corporation ("Adelphia" or "the Company")[1] filed with the Cable Television Division ("Cable Division") of the Department of Telecommunications and Energy proposed basic service tier ("BST") programming rates on FCC Form 1240, [2] and equipment and installation rates on FCC Form 1205, for the above-captioned communities. Pursuant to 47 C.F.R. § 76.933(g), the rates Adelphia proposed in its FCC Form 1240 and FCC Form 1205 filings became effective on August 1, 2002. In addition, on March 26, 2002, Adelphia filed an FCC Form 1235, the "Abbreviated Cost of Service Filing for Cable Network Upgrades," for the Towns of Kingston and Plymouth.

The Cable Division held a public and evidentiary hearing on Adelphia's pending filings in Boston on January 23, 2003. The Towns of Bourne and Duxbury intervened in this proceeding. The evidentiary record includes 21 Adelphia exhibits, Adelphia's responses to our information requests admitted as Cable Division Exhibits 1 through 7, and two responses to record requests. No briefs were filed.

II. 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 1205 establishes rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. FCC Form 1205 Instructions 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).

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 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). Although cable operators may project for increases in franchise related costs ("FRCs") to the extent they are reasonably certain and

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[1] At the time it made its FCC Form 1240 filing, Adelphia's Massachusetts franchises were directly owned by one of the following entities: Adelphia Cablevision Associates, L.P.; Adelphia Cablevision Corp.; Campbell Communications, L.L.C.; Martha's Vineyard Cablevision, L.P.; Mountain Cable Company; and New England Cablevision of Massachusetts, Inc.

[2] Adelphia filed combined FCC Form 1240s for: Abington and Rockland; Adams, Cheshire, Clarksburg and North Adams; Aquinnah, Edgartown and Oak Bluffs; Bourne and Sandwich; and Halifax, Pembroke and Plympton. Individual filings were made for all other communities.

reasonably quantifiable, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A).

The FCC Form 1235 may be filed when a cable operator undertakes a major upgrade of a cable system. 47 C.F.R. § 76.922(j)(1). This form allows the cable operator to calculate a surcharge to its regulated BST programming rate, through which the operator may recover costs associated with the upgrade. 47 C.F.R. § 76.922(j)(5). Adelphia has filed an FCC Form 1235 because it is upgrading the system that serves the regulated communities of Kingston and Plymouth. If Adelphia's proposed surcharge is approved, the Company may charge part or all of the surcharge in addition to the BST programming rates established by Adelphia's FCC Form 1240s for Kingston and Plymouth. Id.

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 Communications Act of 1934, as amended. See generally 47 C.F.R. §§ 76.922, 76.923, 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 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. The Cable Division may also accept as in compliance, network upgrade rate surcharges calculated in compliance with 47 C.F.R. § 76.922(j) and 47 C.F.R. § 76.924. In addition, the Cable Division shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 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 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).

III. DISCUSSION AND ANALYSIS

A. FCC Form 1240

On Adelphia's FCC Form 1240 filings for Amesbury, Essex, Gloucester, Great Barrington, Lee, Lenox, Manchester-by-the-Sea, Merrimac, Rockport, Salisbury, Sheffield and Stockbridge, Adelphia claimed an 11.25 percent annual return on its FRC capital expenditures (Exhs. Adelphia-3, -7, -9, -10, -13, -15, -17, -18, -19, at exhibit IX). Although Adelphia sought this 11.25 percent return on FRC capital expenditures included in True-Up Period 1 and the Projected Period, each of which are 12-month periods, the Company also sought this 11.25

percent return on FRC capital expenditures included in True-Up Period 2, a period of only three months (Hearing Audiotape, Side A, Counter Nos. 160-180; see Exhs. Adelphia-3, -7, -9, -10, -13, -15, -17, -18, -19, at Worksheet 7, True-Up Period and Projected Period, and exhibit IX).

The FCC permits cable operators to earn an 11.25 percent annual return over the useful life of FRC capital expenditures imposed by the franchise agreement. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation: Thirteenth Order on Reconsideration, 11 FCC Rcd 388, FCC 95-397, at 441-442, ¶¶ 132-136 (released Sept. 22, 1995). FRC capital expenditures, including the return, are reported on FCC Form 1240, on Worksheet 7, as "Franchise Related Costs Per Period" (Exhs. Adelphia-3, -7, -9, -10, -13, -15, -17, -18, -19, at Worksheet 7, and exhibit IX). Adelphia conceded that since True-Up Period 2 was only three months, the true-up should be recalculated to include only three months of return (Hearing Audiotape, Side A, Counter Nos. 181-220). Adelphia submitted revised FCC Form 1240s which accurately included for True-Up Period 2 only three months of return on FRC capital expenditures (RR-CTV-1).[3] The resulting changes reduced each community's BST maximum permitted rate ("MPR") (Exhs. Adelphia-3, -7, -9, -10, -13, -15, -17, -18, -19, at 4, Line I9; RR-CTV-1). However, because Adelphia's actual BST rate in each community is below the BST MPR calculated on the revised form, no refunds are due.[4] We found no other issue with the Company's proposed rate calculations on its FCC Form 1240s. Accordingly, we determine that these FCC Form 1240s as originally filed or as revised by RR-CTV-1 for certain communities are reasonable and in compliance with applicable law.

B. FCC Form 1235

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. FCC Form 1235, Instructions for Completion of Abbreviated Cost of Service Filing for Cable Network Upgrades (February 1996) ("FCC Form 1235 Instructions") 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. The network upgrade surcharge is not adjusted for inflation but remains unchanged over the useful life of the improvement, which is determined in

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3 The resulting rate of return over the three months of True-Up Period 2 is 2.8125 percent, or 11.25 percent divided by four (RR-CTV-1, at exhibit IX).

4 Adelphia's actual BST rates in each community, and the revised BST MPR (in parentheses), are as follows: Amesbury, $10.50 ($11.04); Essex, $10.00 ($10.16); Gloucester, $9.50 ($10.07); Great Barrington, Lee, Lenox and Stockbridge, $13.85 ($14.71); Manchester-by-the-Sea, $9.80 ($10.30); Merrimac, $10.50 ($10.96); Rockport, $9.65 ($9.86); Salisbury, $10.50 ($11.12); Sheffield, $13.85 ($14.71) (Exhs. Adelphia-3, -7, -9, -10, -13, -15, -17, -18, -19, at exhibit V; RR-CTV-1).

accordance with the FCC's cost-of-service requirements. Id.; See 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: Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 93-215, CS Docket No. 94-28, FCC 94-39, 9 FCC Rcd 4527, at 4676, ¶ 290 ("Cost Order") (released March 30, 1994).

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 FCC Form 1240 Instructions at 9.

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 (released Sept. 19, 1995); Marcus Cable Partners, L.L.C., DA 00-1071 (released May 15, 2000), at ¶ 8. 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 FCC Form 1235 Instructions 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).

In this proceeding, Adelphia filed an FCC Form 1235 for the regulated communities of Kingston and Plymouth (Exh. Adelphia-20). Adelphia later revised the FCC Form 1235 to account for the deductibility of state income taxes for federal income tax purposes (Exh. CTV-4). On the revised form, Adelphia proposed a monthly upgrade BST surcharge of $1.33 (id., at 3).

The Cable Division must determine whether Adelphia's upgrade satisfies the FCC's five criteria for cost recovery. With respect to the first criterion, the Company certified that the upgrade satisfies the FCC's minimum required technical specifications (id., at 2; see FCC Form 1235 Instructions at 5). In particular, Adelphia states that it upgraded the cable system to 750 MHz, and has expanded its capacity from 59 channels to 258 channels, including digital channels (Exh. Adelphia-20, at exh. 4, at 6). The upgrade required $8.5 million in capital investment (Exh. CTV-4, at 7). The upgrade involved the installation of 509 miles of rebuilt distribution plant (id.). Based on these facts, we find that Adelphia's upgrade is significant, and has 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 Communications San Diego, Inc., Chula Vista, DA 98-1536, 13 FCC Rcd 17653, at 17656, ¶ 9 (released Aug. 4, 1998). No party submitted any evidence to rebut this presumption. Therefore, we find that Adelphia's upgrade satisfies the second criterion, by benefiting regulated subscribers through improvements in services.

With respect to the third criterion, Adelphia stated that even though its FCC Form 1235 had been filed under the FCC's "pre-approval" option, its upgrade is complete (Hearing Audiotape, Side A, Counter Nos. 597-603; see FCC Form 1235 Instructions at 2). The Company explained that it sought pre-approval rather than final approval to allow it an opportunity to make any adjustments required by the Cable Division (Hearing Audiotape, Side A, at Counter Nos. 607-612). Adelphia's recovery period for its surcharge is 12 years, the useful life of its distribution facilities, the only assets included on its FCC Form 1235 (Exh. Adelphia-20, at 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 (released Jan. 26, 1996), at 2316-2318. Adelphia considered the starting date of this 12-year period to be the completion date of the upgrade; because its FCC Form 1235 was filed after the completion date, Adelphia recognized that it would lose a year of cost recovery, and could only collect the surcharge over the remaining years of the period (Hearing Audiotape, Side A, at Counter Nos. 627-640). The Company would not seek to recover the full costs of the upgrade over a shorter period of time (id. at Counter Nos. 640-642). Since the upgrade is complete, we conclude that the recovery of the approved costs assessed with the upgrade 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 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 (Exh. CTV-4).

With respect to the fifth criterion, the Company states that the BST will carry 22 of the 110 post-upgrade channels (id., at 7). The Company allocated 20 percent of the upgrade's costs to the BST (id.). The Cable Division has specifically approved an allocation of upgrade costs based upon the number of channels. Adelphia Cable Communications, Y-98 INC, Y-98 EQU (1999); Time Warner Cable, Y-00 INC, Y-00 EQU, Y-00 UPG (2000). We find that Adelphia has allocated the cost of the upgrade between BST, CPST and other non-regulated services, based upon the percentage of post-upgrade channels carried on the BST (Exh. CTV-4, at 7). Thus Adelphia has properly ensured that only costs allocable to regulated services are imposed on subscribers to those services.

We conclude that Adelphia is eligible for recovery of costs associated with its upgrade in the Kingston and Plymouth system, and that its revised FCC Form 1235 is in compliance with applicable law, and that the upgrade surcharge proposed therein is reasonable.

C. FCC Form 1205

Adelphia's FCC Form 1205 includes only one converter and one remote control category, incorporating both digital and addressable units (Exh. Adelphia-21, at 3). On the form, the per-unit cost for equipment is calculated by dividing the total cost by the number of units in service. Adelphia's form calculation includes not only the gross book value of the digital equipment inventory, but the inventory units themselves (id.). While the inclusion of inventory units as part of units in service would, in theory, offset any gross book value increase, since both the denominator and numerator increase, the inclusion of each higher-cost digital equipment unit actually increases the per-unit cost for equipment calculated by the FCC Form 1205, and hence, the rate subscribers may be required to pay. Id. Consequently, the cable operator bears the burden of showing that the amount of its digital equipment in inventory is reasonable.

In the previous Adelphia rate proceeding, the Cable Division determined that Adelphia had failed to establish the appropriateness of its inventory costs. Adelphia Communications Corporation, CTV 01-4, at 5 (2002) (the "2002 Rate Order"). We concluded that although costs associated with a reasonable level of inventory are properly included in the equipment rate calculations, Adelphia had failed to establish that the level of inventory included in the filing was reasonable. Id. We directed the Company to remove from the gross book value and accumulated depreciation totals the costs associated with digital units purchased for deployment at a future date. Id. We recognized that the Company could appropriately include in its calculations costs associated with reasonable inventory held as spare units. To the extent Adelphia sought to include such inventory, we required Adelphia to provide support. Id.

Adelphia appealed the 2002 Rate Order to the FCC's Media Bureau.[5] Adelphia simultaneously filed an Emergency Petition for Stay of Enforcement Pending Appeal of Rate Order. As of the date of this Rate Order, the Media Bureau has not acted on either the Emergency Petition for Stay or on Adelphia's Appeal.[6] Thus, the Cable Division's decision in the 2002 Rate Order regarding the Company's inventory remains in full force and effect. We will apply the same standards as we address the issue in the present matter.

Adelphia's FCC Form 1205 under consideration in this proceeding, like its FCC Form 1205 considered in the 2002 Rate Order, is filed for the Company's New England Region, comprised of cable systems in Connecticut, Maine, Massachusetts, New Hampshire, eastern New York, and Vermont (Exh. Adelphia-21). The Company reported that it had 171,604 digital converters in service and 85,338 digital converters in inventory (id., at 9). The Company also reported 171,655 digital remote controls in service and 155,338 digital remote controls in inventory (id.). Adelphia's digital converter inventory was 49.7 percent of the digital converters in actual service, and its digital remote control inventory was 90.5 percent of the digital remote controls in actual service. With respect to addressable equipment, Adelphia reported 93,137 converters and 76,682 remote controls in service, while it had 165,941 converters and 181,677 remote controls in inventory (id.).

An operator may include in its equipment rate calculation "the cost of a reasonable number of spare customer equipment units that the operator keeps on-hand as replacements for broken equipment." FCC Form 1205 Instructions at 13. While the FCC has not explicitly defined "a reasonable number of spare customer equipment units," the FCC has held that the determination of whether a cable operator should be allowed to recover the costs of allegedly excess inventory in its rates is an issue to be left to the discretion of the local franchising authority, and that the FCC would not disturb the findings of a local franchising authority if there is a reasonable basis for its decision. Crown Media, Inc., d/b/a Crown Cable, 10 FCC Rcd 6626, DA 95-720, at ¶ 17 (released April 5, 1995). The FCC has also recognized that a cable operator may keep some inventory of spare equipment available because of a new product, if it can demonstrate the demand for this equipment. Warner Cable Communications, 11 FCC Rcd 9246, DA 96-1241, at ¶ 9 (released Aug. 13, 1996) ("Warner"). Finally, the Cable Division has recognized that an inventory level may be justified by fluctuating demand due to seasonal population shifts. New England Cablevision of Massachusetts, Inc., Y-94 BNK, Y-95 EQU, Y-95 INC at 5 (1996).

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5 General Laws c. 166A, §2, requires a party aggrieved of a decision of the Cable Division to file a petition seeking appeal of that decision with the full Commission of the Department of Telecommunications and Energy.

6 Due to the pending appeal at the FCC, the Cable Division did not commence enforcement action.

While each cable operator's forms are properly reviewed based on the record developed in that proceeding, a franchise authority's decision is also influenced by its experience and expertise. In this case, Adelphia seeks recovery of costs associated with an amount of inventory exceeding that typically seen in Massachusetts. Other Massachusetts cable operators are upgrading systems, launching digital service, or serving seasonal subscribers. Yet, inventory levels approved are typically in the 10 percent to 14 percent range. See Time Warner Cable, CTV 01-7 (Aug. 9, 2002) (FCC Form 1205 approved with digital inventory level of 12.9 percent); New England Cablevision of Massachusetts, Inc., Y-94 BNK, Y-95 EQU, Y-95 INC at 5 (1996) (FCC Form 1205 approved with inventory level of 10 percent). In addition, our analysis is influenced to some degree by the fact that Adelphia is engaged in other legal proceedings, especially as some of those proceedings involve issues concerning inventory of digital equipment.

In this proceeding, unlike the prior case, Adelphia offered testimony and documentary evidence in an attempt to establish the requisite demand for its digital equipment (Hearing Audiotape, Side A, Counter Nos. 277-503; Exh. Adelphia-21, at exhibit I, at 9). The Company presented testimony regarding its general business practices (Hearing Audiotape, Side A, Counter Nos. 277-503). In particular, the Company explained that the increase in demand for digital units was a result of system upgrades in Massachusetts and in other New England states included in the FCC Form 1205, and marketing promotions in already upgraded systems that enticed subscribers to accept digital service (id. at Counter Nos. 430-478). Two business plans adopted by the Company further support an increase in demand for digital equipment as well as a decrease in addressable units in service: (1) allowing subscribers to lease more than one digital converter; and (2) offering only digital units by gradually exchanging all addressable units with digital converters (id. at Counter Nos. 277-295; 383-415). While the Company had ample opportunity to assemble data on its equipment in service and in inventory for the last months of 2001 and for most of 2002 in order to establish the monthly deployment rate of its digital converters and remote controls, it did not provide such evidence.

The Company also stated that its seasonal subscribers return units when their residences are not occupied, and this fact combined with the need for spare units to replaced damaged units in service further result in increased inventory levels (id. at Counter Nos. 320-331). Adelphia provided no data or other evidence to establish the magnitude of its seasonal demand, such as documentation reporting the percentage of its subscribers that are seasonal, or information concerning the actual number or percentage of digital units that seasonal subscribers returned to the Company while their residences are unoccupied. In addition, Adelphia presented no data or other evidence concerning the breakdown or loss rate of its digital equipment. Cf. Warner at ¶ 11 (cable operator annualized several months of actual loss experience with new converters to arrive at a loss rate percentage).

The FCC Form 1205 establishes that the Company has deployed a significant number of digital converters. The number of digital converters in service increased from 67,491 on December 31, 2000, to 171,604 on December 31, 2001; similarly, the number of digital remote controls in service increased from 66,874 on December 31, 2000, to 171,655 on December 31, 2001 (2002 Rate Order at 3; Exh. Adelphia-21, at exhibit I, at 9). Based on this data, we find that Adelphia placed in service 104,113 additional digital converters and 104,781 digital remote controls; substantially more that its inventory on December 31, 2000 (See 2002 Rate Order at 3). Evidence of past deployment alone cannot justify future demand.

With respect to its inventory of addressable units, Adelphia explained that this inventory increased as the result of its plan to replace addressable units with digital units. Adelphia noted its intent to deploy these addressable units in another region served by the Company, yet included these units on its FCC Form 1205 prepared for the New England region (Hearing Audiotape, Side A, Counter Nos. 277-295; 485-503). While there is no reasonable basis for including inventory that substantially exceeds the number of units in service and is not expected to serve subscribers here, its inclusion in this instance mitigates the rate impact of the increase in digital units. Specifically, the lower cost of almost fully depreciated addressable units, when included in inventory, serves to reduce the average cost of the more expensive digital units.

Importantly, Adelphia has elected not to charge the MPR for its converters. Rather, the Company selected a monthly rate of $3.25, a rate that is $1.16 less than the rate of $4.41 it seeks to justify on the FCC Form 1205. If the Cable Division were to reject the evidence Adelphia submitted and order the Company to remove its inventory from its rate calculations, there would be no decrease in the amount the Company is charging for this equipment. In this case, the Company has made a demonstration that there is a demand for digital equipment. While we find that the Company's demonstration is lacking in some respects, any adjustments made to its FCC Form 1205 would have no impact on the rates paid by subscribers. To require Adelphia to refile its form in this instance would impose an administrative burden on the Company and would provide no benefit to ratepayers. Therefore, we find, on balance, that Adelphia has established the appropriateness of its inventory costs in this instance.

As stated above, Adelphia's FCC Form 1205 includes only one category of equipment, consisting of both addressable and digital units. Since Adelphia has stated its intent to replace all addressable units with digital units in this region, we anticipate that future forms will include cost data only from digital units. As evidenced in this proceeding, the gross book value of these units is expected to increase.[7] Consequently, subscribers will likely experience a significant increase in the leased converter rate. Adelphia has also stated that it has been aggressively meeting its goal of upgrading all of its systems. Because the demand for these

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[7] On December 31, 2000, Adelphia's digital converters had a per-unit gross book value of $229.36. 2002 Rate Order at 3, n.2. On December 31, 2001, the digital converters have a per-unit gross book value of $299.49. However, considering only those digital converters that Adelphia added to its New England Region during 2001, we find that these digital converters have a per-unit gross book value of $353.12.

units is driven by the roll-out of a digital service, once that service is established, demand for the units should wane. At that point, the Company should require as inventory only that which is necessary to replace damaged units in service and to serve its seasonal subscribers. Given these considerations, any future attempt to include significant inventory in the equipment rate calculations will be met with intense scrutiny. The Cable Division will require future evidence concerning monthly deployment schedules, purchases, and inventory levels, as well as specific evidence supporting the number of damaged units, seasonal subscribers and equipment returns.

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 1240s as filed on March 26, 2002, for Abington, Adams, Aquinnah, Bourne, Cheshire, Clarksburg, Duxbury, Edgartown, Falmouth, Halifax, Kingston, Marshfield, North Adams, Oak Bluffs, Pembroke, Plymouth, Plympton, Rockland and Sandwich.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Adelphia's FCC Form 1240s as filed on March 26, 2002, for Amesbury, Essex, Gloucester, Great Barrington, Lee, Lenox, Manchester-by-the-Sea, Merrimac, Rockport, Salisbury, Sheffield and Stockbridge. The Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelphia's revised FCC Form 1240s submitted as RR-CTV-1 for Amesbury, Essex, Gloucester, Great Barrington, Lee, Lenox, Manchester-by-the-Sea, Merrimac, Rockport, Salisbury, Sheffield and Stockbridge.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Adelphia's FCC Form 1235 as filed on March 26, 2002 for Kingston and Plymouth. The Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelphia's revised FCC Form 1235 submitted as RR-CTV-4 for Kingston and Plymouth.

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 Form 1205 as filed on March 26, 2002 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.

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

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 7 days of the filing of the initial petition for appeal.