



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

In the Matter of)	Docket No. CTV 01-4
Adelphia Communications)	Date Issued: January 8, 2004
Corporation)	
)	Abington, CUID MA 0225
Adelphia Cablevision)	Adams, CUID MA 0001
Associates, L.P.)	Amesbury, CUID MA 0049
)	Aquinnah, CUID MA 0275
Campbell)	Bourne, CUID MA 0247
Communications, L.L.C.)	Cheshire, CUID MA 0002
)	Clarksburg, CUID MA 0003
Century Berkshire)	Duxbury, CUID MA 0302
Cable Corp.)	Edgartown, CUID MA 0273
)	Essex, CUID MA 0153
Harron Cablevision)	Falmouth, CUID MA 0072
of Cape Cod, Inc.)	Gloucester, CUID MA 0136
)	Great Barrington, CUID MA 0008
Harron Cablevision)	Halifax, CUID MA 0229
of Massachusetts, Inc.)	Kingston, CUID MA 0159
)	Lee, CUID MA 0009
Martha's Vineyard)	Lenox, CUID MA 0010
Cablevision, L.P.)	Manchester-by-the-Sea, CUID MA 0154
)	Marshfield, CUID MA 0191
Mountain Cable)	Merrimac, CUID MA 0165
Company)	North Adams, CUID MA 0004
)	Oak Bluffs, CUID MA 0272
New England Cablevision)	Pembroke, CUID MA 0228
of Massachusetts, Inc.)	Plymouth, CUID MA 0123
)	Plympton, CUID MA 0245
all d/b/a)	Rockland, CUID MA 0224
Adelphia Communications)	Rockport, CUID MA 0137
Corporation)	Salisbury, CUID MA 0162
)	Sandwich, CUID MA 0246
For a Determination)	Sheffield, CUID MA 0346
of Cable Television Rates)	Stockbridge, CUID MA 0011
)	

ORDER ON REFUND PLAN

APPEARANCES: Gerald Buckley
Regional Director of Government Relations
Adelphia Communications Corporation
35 Resnik Road
Plymouth, MA 02360
FOR: ADELPHIA COMMUNICATIONS CORPORATION
Petitioner

Mary E. MacQuarrie
878 Tremont Street
Duxbury, MA 02332
FOR: THE TOWN OF DUXBURY
Intervenor

Richard Carlotta
P.O. Box 6
Housatonic, MA 01236
FOR: THE TOWN OF SHEFFIELD
Intervenor

Michael A. McKenna
18 Herring Brook Lane
Pembroke, MA 02359
FOR: THE TOWN OF PEMBROKE
Limited Participant

On July 18, 2002, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy issued an order rejecting Adelphia Communications Corporation’s (“Adelphia” or “the Company”) proposed Federal Communications Commission (“FCC”) Form 1205, reasoning that the Company had failed to properly justify certain inventory costs. Adelphia Communications Corporation, CTV 01-4 (2002) (“Rate Order”). After several further filings, the Cable Division accepted a FCC Form 1205 submitted by Adelphia on October 31, 2003, as reasonable and in compliance with applicable statutes and regulations.¹ Adelphia Communications Corporation, Order Accepting Compliance Filing, CTV 01-4, at 2 (Nov. 25, 2003). Since the converter rate the Cable Division approved was less than the maximum permitted rate (“MPR”) the Company implemented on August 1, 2001, the Cable Division directed Adelphia to refund the overcharges to subscribers and to file, for review and approval, its plan to implement the refunds. Id. at 3. Adelphia filed its refund plan on December 16, 2003.

The Cable Division approved a MPR for converters of \$3.04, for the period between August 1, 2002 and July 31, 2002. Id. at 2. The Company charged \$3.25 per converter monthly during this period.² In its refund plan, Adelphia calculated the amount it overcharged subscribers for converters to be \$0.21 per month from August 1, 2001 and through July 31, 2002 (Refund Plan at 1). The Company’s computation, which includes interest on these overcharges through December 2003, results in a total over-recovery of \$346,561.11 (id.). Adelphia noted that while the Company had overcharged for converters, it had simultaneously undercharged for remote control units. The Company had charged \$0.25 per remote control, \$0.08 less than the approved MPR of \$0.33 (id. at 2). The Company computed that during the 12-month period covered by the rate form, the amount it had undercharged for remote controls, with interest, totaled \$123,437.65 (id.). Adelphia proposed, without any authoritative citation, to offset its refund liability associated with the converter overcharge by the amount it had undercharged for remote controls (id., cover letter). This offset would result in a net refund amount of \$223,123.46 (id. at 2). Adelphia proposed to pay a one-time refund to subscribers that lease a converter during the month of implementation (id., cover letter).

As an initial matter, the Cable Division determines that the Company’s calculation of

¹ For a complete procedural history, see Adelphia Communications Corporation, CTV-01-4, “Order Rejecting Compliance Filing,” at 1, n. 1 (Oct. 7, 2003).

² Under federal law, a cable operator may implement its proposed rates, subject to review and refund. 47 C.F.R. § 76.933(g).

overcharges for the lease of converters is accurate.³ The issue is whether Adelphia is permitted to reduce its refund liability by offsetting its converter overcharges with its remote control undercharges.

A refund liability can be imposed when an operator's actual charges exceed maximum permitted levels during the applicable period of review. 47 C.F.R. § 76.942. Where the FCC has allowed offsets to a cable operator's refund liability, it has done so in the context of the initial unbundling of basic tier and equipment rates. See TCI Cablevision of North Central Kentucky, Inc., 10 FCC Rcd 926, DA 94-1479 (1994). Section 76.942(a) of the FCC's rules eased the transition to rate regulation by requiring franchising authorities to determine refund liability for the initial regulated rates on the basis of aggregated basic service tier and equipment rates. TCI Cablevision of Washington, Inc., DA 98-1862, at ¶ 8, citing Media General Cable of Fairfax County, Inc., 12 FCC Rcd 17,424, DA 97-2241, at ¶ 20 (1997).

However, the FCC clearly stated that once permitted regulated rates were established, offsets would no longer be appropriate for subsequent rate adjustments. Media General Cable of Fairfax County, Inc., at ¶ 20. The FCC reasoned that operators filing to adjust BST rates for inflation and external costs and to adjust equipment and installation costs would have experience with the FCC rules. Allowing refund offsets beyond the initial period would create a disincentive to comply with the requirements that equipment and installation charges be set at cost. Id. at ¶ 23.

The prohibition of offsets relative to unbundled programming and equipment rates applies equally to equipment rates unbundled from each other. See Maryland Cable Partners, L.P., DA 00-1544, at ¶ 10 (2000). The FCC's regulations do not provide for the computation of a combined rate for converters and remote controls. On the contrary, the FCC's rule clearly requires that the rates for converters and remote controls be unbundled from each other. 47 C.F.R. § 76.923(b). This rule incorporates Congress' conclusion that the cost for each category of equipment must be computed independently, on the basis of actual cost. 47 U.S.C. § 543(b)(3). Although Congress later provided for nationwide FCC Form 1205 filings, and the aggregation of equipment into broad categories, "such as converter boxes," it did not provide for the combination of different types of equipment. 47 U.S.C. § 543(a)(7).

Moreover, the FCC's regulations provide that cable operators may not recover the cost of a promotional offering by increasing the charges for other equipment basket elements or by increasing programming rates above the maximum monthly charges prescribed by the FCC's

³ Interest, of course, must be recalculated to the date the refund is implemented.

rules. 47 C.F.R. § 76.923(j). The FCC has applied this rule in the context of refund liability, stating that a promotional discount cannot be recovered through a refund offset. Maryland Cable Partners, at ¶ 10 (2000). The FCC reasoned that:

An operator's decision to charge less than the permitted charge reflects its business decision and should not be subsidized by increased charges or reduced refunds for other offerings, whether within or outside the equipment basket. Such subsidies would be inconsistent with the requirement in section 76.923(b) of the Commission's rules that rates for remote control units, converters, other customer equipment, installation, and additional connections be separate from rates for basic tier service and be unbundled from each other (footnote omitted). Such subsidies would also create a disincentive to comply with the requirements that equipment and installation charges be set at cost and would undermine Congressional intent to create a competitive market for cable equipment providers (footnote omitted).

Id.

Here, Adelphia has made a conscious business decision to offer remote controls to subscribers at prices below their permitted levels, i.e. at a promotional rate. See 47 C.F.R. § 76.923(j); compare United Cable Television of California d/b/a TCI Cablevision of Davis, 11 FCC Rcd 4465, DA 95-784, at ¶ 10 (1995). Adelphia may not now seek to recover the costs of that discount through a refund offset. As the FCC held, to do so would allow the Company to subsidize its remote control discounted rate.

Finally, the proposed offset would, in effect, retroactively increase the actual rate charged by Adelphia for remote controls from \$0.25 to \$0.33, without proper notice to subscribers. Although the Cable Division approved a MPR of \$0.33, a cable operator must provide 30 day advance notice of any increase in the rate actually charged for an item of equipment. 47 C.F.R. § 76.1603(d); 207 C.M.R. § 10.02(2). Moreover, during the period in question, the number of remote controls leased by subscribers was only 93 percent of the number of converters that were leased (Refund Plan, at 1, 2). Although most subscribers leasing converters also leased remote controls, the number of consumers that did not also lease remote controls cannot be disregarded. According to the Company's refund plan, during the last month covered by the plan, 7,958 subscribers leased converters but did not lease remote controls (id.). If we were to allow the proposed offset, these subscribers would receive a smaller refund than that to which they otherwise would be entitled.

Therefore, based on federal law and precedent, and general consumer protection principles, the Cable Division rejects Adelphia's proposed refund plan to the extent it includes

an offset for refund liability. We direct Adelphia to refund to subscribers the total amount of converter overcharges calculated on the first page of its refund plan, plus current interest. We further direct Adelphia to pay the pro rata amount of this refund to those subscribers that lease converters during the month of implementation of the refund. We further direct 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 number of subscribers receiving refunds, and (3) the total amount of refunds paid.

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

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