



THE 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 Corporation	)	Date Issued: October 7, 2003
)	
Adelphia Cablevision Associates, L.P.	)	Abington, CUID MA 0225
	)	Adams, CUID MA 0001
Campbell Communications, L.L.C.	)	Amesbury, CUID MA 0049
	)	Aquinnah, CUID MA 0275
Century Berkshire Cable Corp.	)	Bourne, CUID MA 0247
	)	Cheshire, CUID MA 0002
Harron Cablevision of Cape Cod, Inc.	)	Clarksburg, CUID MA 0003
	)	Duxbury, CUID MA 0302
Harron Cablevision of Massachusetts, Inc.	)	Edgartown, CUID MA 0273
	)	Essex, CUID MA 0153
Martha's Vineyard Cablevision, L.P.	)	Falmouth, CUID MA 0072
	)	Gloucester, CUID MA 0136
Mountain Cable Company	)	Great Barrington, CUID MA 0008
	)	Halifax, CUID MA 0229
New England Cablevision of Massachusetts, Inc.	)	Kingston, CUID MA 0159
	)	Lee, CUID MA 0009
all d/b/a Adelphia Communications Corporation	)	Lenox, CUID MA 0010
	)	Manchester-by-the-Sea, CUID MA 0154
	)	Marshfield, CUID MA 0191
	)	Merrimac, CUID MA 0165
	)	North Adams, CUID MA 0004
	)	Oak Bluffs, CUID MA 0272
	)	Pembroke, CUID MA 0228
	)	Plymouth, CUID MA 0123
	)	Plympton, CUID MA 0245
	)	Rockland, CUID MA 0224
	)	Rockport, CUID MA 0137
	)	Salisbury, CUID MA 0162
	)	Sandwich, CUID MA 0246
For a Determination of Cable Television Rates	)	Sheffield, CUID MA 0346
	)	Stockbridge, CUID MA 0011

ORDER REJECTING COMPLIANCE FILING

Terrence L. Sergi
Supervisor, Rate Regulation
Adelphia Communications Corporation
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AND

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AND

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FOR: ADELPHIA COMMUNICATIONS CORPORATION

Petitioner

Mary E. MacQuarrie
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FOR: THE TOWN OF DUXBURY

Intervenor

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FOR: THE TOWN OF SHEFFIELD

Intervenor

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FOR: THE TOWN OF PEMBROKE

Limited Participant

I. INTRODUCTION

On July 18, 2002, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy issued a Rate Order (“Order”) rejecting Adelphia Communications Corporation’s (“Adelphia” or “the Company”) proposed Federal Communications Commission (“FCC”) Form 1205. Order at 5. The Cable Division found that Adelphia had not justified its inventory costs properly. Id. The Cable Division directed Adelphia to revise the FCC Form 1205 and provide supporting documentation for the proposed inventory costs.¹ Id. On August 15, 2003, Adelphia submitted a revised FCC Form 1205, with a cover letter and two accompanying attachments (the “Compliance Filing”). On August 18, 2003, the Cable Division issued a Notice of Comment Period on Compliance Filing, to which the Town of Pembroke responded. Pembroke requested that the Cable Division audit Adelphia’s current and previous rate filings retroactive to the date the Company acquired its cable systems. Pembroke further requested that the Cable Division require Adelphia to immediately refund any customer overcharges, and pursue the possibility of a fine against the Company.

II. ANALYSIS AND FINDINGS

In its Compliance Filing, Adelphia included as inventory 16,198 digital converters and 16,198 digital remote controls (Compliance Filing, Attachment I). The Company reported that it had 67,491 digital converters and 66,874 remote controls in service. Thus, the Company sought to recover costs for inventory that amounts to 24 percent of the units in service (id.; Exh. Adelphia-1, at Exhibit 1, at 9). In its original proposal, which we rejected, the Company claimed digital converter inventory of 65 percent of the converter units in service and 82 percent of the digital remote controls in service. Order at 3, 5.

In support of its current proposal, Adelphia stated that it considered an inventory level sufficient to support a minimum of 1 month to 5 weeks of equipment necessary and reasonable given the increased deployment of digital service in all of its cable systems (Compliance Filing, Cover Letter at 1). Adelphia further argued that it is necessary to maintain a minimal level of

¹ The Compliance Filing was due on July 31, 2003. Following Adelphia’s failure to reply to our directive in a timely manner, we issued an Order Mandating Compliance on August 12, 2002. On August 19, 2002, Adelphia appealed the Order to the FCC’s Media Bureau. On July 16, 2003, the Media Bureau released a Memorandum Opinion and Order rejecting Adelphia’s appeal, and determining that the Cable Division was reasonable in finding that Adelphia had not properly justified its inventory costs on the FCC Form 1205. Adelphia Communications Corp., DA 03-2339. The Cable Division issued a Second Order Mandating Compliance on July 21, 2003.

units to replace defective equipment. Adelphia provided a schedule showing the monthly deployment of digital converters in 2001 (Compliance Filing, Attachment II). This schedule reported monthly deployment levels varying from 11,398 converters in January to 5,830 converters in May (id.).

As we found in the Order, an operator may include in its equipment rate calculation the cost of a reasonable number of spare units that the operator keeps on-hand as replacements for broken units. Order at 4, citing FCC Form 1205 Instructions at 13. We also stated that a cable operator may keep some inventory of spare equipment available because of a new product. Order at 4. In each instance, the burden is on the cable operator to establish that the calculation of inventory costs comports with federal law. Order at 2, citing 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 (1993). With respect to inventory available for new product offerings, a cable operator must demonstrate the demand for this equipment. Warner Cable Communications, DA 96-1241 (1996).

While the Company provided some information in an effort to establish demand for the digital equipment, we find the Company's showing insufficient to meet its burden. It appears that Adelphia arbitrarily selected an inventory level, rather than deriving the number from a reasonable method. Specifically, Adelphia did not explain how it used the information reported on the 2001 deployment schedule to derive the equipment activity component of its December 31, 2000 inventory level. Moreover, Adelphia did not provide a comparable schedule reporting the monthly deployment of digital remote controls. The arbitrary nature of the digital inventory level is highlighted by the fact that Adelphia has included the same number of remote controls as converters in inventory despite the significant variation (82 to 65 percent) in the original filing and the fact that the Company has deployed more converters than remote controls. In addition, we are unable to determine from the Company's filing, what amount of the 16,198 units represents those units held as spare units to replace defective equipment. We conclude that Adelphia has not provided sufficient support for the inventory costs. We direct Adelphia to provide the specific calculations used to arrive at its digital inventory levels, together with supporting documentation.

In addition to revising the inventory component of the FCC Form 1205, the Company made other adjustments not contemplated by our Order. The FCC Form 1205 allows operators to include a number of spare units in order to cover the costs of maintaining spare units to replace defective equipment. This is accomplished by including the costs of these units in the gross book value - the numerator of the calculation - but not including these units in the units in service category - the denominator of the calculation. FCC Form 1205 at 5, Steps C and D; FCC Form 1205 Instructions at 13. In its original filing, Adelphia included the cost of its new undeployed units on Schedule C, Line D of the FCC Form 1205, and the units in service on Schedule C, Line C of the form (Exh. Adelphia-1 at 3). Adelphia anticipated rapid deployment

of these units, and for ratemaking purposes it treated them as units in service. The Cable Division approved the Company's treatment of these costs, because it ensures that subscribers do not bear the burden of inventory carrying costs associated with units that will be deployed during the projected period, even though the operator is able to begin recovering for its costs earlier than it might otherwise.² In its Compliance Filing, Adelphia removed the digital inventory amounts from the units in service (Compliance Filing at 3). This effectively allowed Adelphia to more than offset any reduction to its rates associated with compliance to the Order. The Company provided no rationale for departing from the approved methodology. Adelphia's proposed change in methodology is inappropriate at this stage in the proceeding. Such a change would be considered only after due notice and hearing.

Furthermore, in calculating the total number of units in service on Schedule C, Line C, Adelphia not only removed its digital inventory but also deducted an amount representing its analog inventory. However, the Company had not included that analog inventory amount in its original filing.³ The result is that the Company, in its Compliance Filing, reported fewer units in actual service than it had reported on the Original Filing. This resulted in increases in the monthly maximum permitted rates for all converters and remote controls. Again, this change in methodology is inappropriate at this stage in the proceeding.

In its comments, the Town of Pembroke requested an audit of all of Adelphia's rate filings since the time Adelphia acquired its systems. The goal of any such audit, we assume, would be to adjust approved rates retroactively based on newly discovered data. It is unclear whether the Cable Division is authorized to impose such adjustments. See Town of Norwood, Mass. v. FERC, 53 F. 3d 377, 381 (D.C. Cir. 1995) (under the approved rate doctrine, a rate regulator may not require a regulated company to adjust current rates to make up for past errors). We need not address whether such a review is authorized at this time. Because of

² If the cable operator did not include these costs in the units in service calculation during the first year after purchase, these units, and their associated costs, would be treated as spare equipment. As such, for the year, the cost of these units would be included in the cost calculation for the units in actual service, and would increase the rate for all units in actual service.

³ In the original filing, Adelphia reported that it had 326,569 Converter 1 units in actual service (Exh. Adelphia-1, at Exhibit I, at 9). In the Compliance Filing, Adelphia reported 317,808 Converter 1 units in service, a decrease of 8,761 units (Compliance Filing at 3). In the original filing, the Company reported 8,761 as the inventory of Converter 1 addressable converters (Exh. Adelphia-1, at Exhibit I, at 9). Similarly, Adelphia originally reported that it had 184,099 Remote 1 units in actual service (Exh. Adelphia-1, at Exhibit I, at 9). Subsequently, the Company reported that it had 175,338 Remote 1 units in service, 8,761 units less than the original filing (Compliance Filing at 3). In the original filing, Adelphia reported 8,761 addressable remote controls in inventory (Exh. Adelphia-1, at Exhibit I, at 9). Further, the Company originally reported it had 47,037 non-addressable Converter 2 units in service (Exh. Adelphia-1, at Exhibit I, at 9). However, in the Compliance Filing, the Company reported only 31,358 units in service, a difference of 15,679, the same amount as non-addressable converters in inventory (compare Compliance Filing at 3 with Exh. Adelphia-1, at Exhibit I, at 9).

pending criminal and bankruptcy proceedings, Adelphia has not made its required financial filings for the years ending December 31, 2001 and December 31, 2002 with the Securities and Exchange Commission. Letter from Leslie J. Brown, Assistant General Counsel, Adelphia, to Cable Division (April 2, 2003). The Company has stated that it expects to restate its financial reports for the years ending December 31, 1999 and December 31, 2000. *Id.* Clearly, these reports would provide the basis for an audit. When these reports are filed with the appropriate federal authorities, the Cable Division will determine what, if any, action is required of us.

Meanwhile, Massachusetts subscribers' interests are protected in this rate proceeding. The form under review in this proceeding is an FCC Form 1205, upon which cable operators annually establish equipment and installation rates using data from the most recent fiscal year. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, MM Docket No. 92-266, FCC 95-397, 11 FCC Rcd 388, at 444, ¶ 88 (1995) Cable operators establish equipment and installation rates based only on their actual costs during that fiscal year. *Id.* at 444, 445; ¶¶ 88, 90. Also, cable operators do not enter financial data from previous fiscal years into the rate calculations. Therefore, while we cannot retroactively alter approved rates, on a going forward basis, the Cable Division, through its review of financial data from the current fiscal year, will ensure that equipment and installation rates are just and reasonable. The Cable Division is also able to ensure that Adelphia's basic service tier programming rates filed on FCC Form 1240 are just and reasonable. Although the FCC Form 1240 employs projections to establish its maximum permitted basic service tier rates, we review Adelphia's reconciliation of the previous form's projected cost increases with the actual increases reported on its current form.

Pembroke also seeks refunds of customer overcharges. The Cable Division has authority to direct that refunds be paid for any equipment rates charged that exceed maximum permitted rates. 47 C.F.R. § 76.942(a). While we expect to exercise this authority in this proceeding, we are not yet able to make the appropriate order given the remaining issues with this Compliance Filing. Once we approve an FCC Form 1205, thus establishing the appropriate maximum permitted rates, we will compare those rates with what the Company has been charging. If there were overcharges, the Cable Division will make the appropriate refund order. Finally, while authorized to order refunds, the Cable Division lacks authority to impose fines on a cable operator. Such enforcement actions must be referred to the Office of the Attorney General.

Based on our review of Adelphia's compliance filing, we determine that the Company has failed to adequately justify its inventory costs. Further, we determine that the revised FCC Form 1205 Adelphia submitted does not comply with our Order. Therefore, we direct Adelphia to again revise the FCC Form 1205 consistent with our orders, and to submit documentation supporting its calculation of inventory costs.

III. ORDER

Accordingly, after review and consideration, it is

ORDERED: That the compliance filing made by Adelphia Communications Corporation on August 15, 2003 is hereby rejected, and it is

FURTHER ORDERED: That Adelphia Communications Corporation submit to the Cable Division, within ten days of this Order, an FCC Form 1205 revised in accordance with this Order, with documentation supporting its calculation of inventory costs.

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

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