

THE COMMONWEALTH OF MASSACHUSETTS

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

In the Matter of)	Docket No. Y-99 INC, Y-99 EQU
)	Date Issued: September 21, 1999
)	
Century Berkshire Cable Corp.)	Great Barrington, CUID MA 0008
)	Lee, CUID MA 0009
For a Determination of)	Lenox, CUID MA 0010
Cable Television Rates)	Sheffield, CUID MA 0346
)	Stockbridge, CUID MA 0011

RATE ORDER

APPEARANCES:

Robert J. Larson, Vice President and Controller
Corrine Cobbol, Accounting Manager
Century Communications Corporation
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New Canaan, CT 06840-4750
FOR: CENTURY BERKSHIRE CABLE CORP.
Petitioner

Debra A. O'Brien, General Manager
Century Berkshire Cable Corp.
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Lee, MA 01238
FOR: CENTURY BERKSHIRE CABLE CORP.
Petitioner

Peter A. Weissenstein
P.O. Box 15
Lenox, MA 01240-0015
FOR: THE TOWNS OF
GREAT BARRINGTON, LEE,
SHEFFIELD AND STOCKBRIDGE
Intervenors

I. INTRODUCTION

On January 29, 1999, Century Berkshire Cable Corp. (“Century” or “the Company”) filed with the Cable Television Division (“Cable Division”)¹ of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240s,² and proposed equipment and installation rates on FCC Form 1205s,³ for each of the above-captioned communities. Pursuant to 47 C.F.R. § 76.933(g), Century put the proposed BST programming, equipment and installation rates into effect on June 1, 1999.

The Cable Division held a public hearing on Century’s pending filings in Lee on August 17, 1999. The Towns of Great Barrington, Lee, Lenox, Sheffield and Stockbridge intervened in this proceeding. The evidentiary record includes five Century exhibits and two responses to record requests posed by the Cable Division. No briefs were submitted by any party.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

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

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

² The FCC Form 1240 allows a cable operator to annually update its basic service tier programming rates to account for inflation, changes in external costs, and changes in the number of regulated channels. Century filed a combined FCC Form 1240 for Great Barrington, Lee, Lenox and Stockbridge, and a separate FCC Form 1240 for Sheffield.

³ The FCC Form 1205 allows a cable operator to annually adjust its costs of regulated cable equipment and installation. Pursuant to the FCC’s rate regulations at 47 C.F.R. § 76.923(n)(3), the FCC Form 1205 is filed on the same date the cable operator files its FCC Form 1240. Century filed a combined FCC Form 1205 for Great Barrington, Lee, Lenox and Stockbridge, and a separate FCC Form 1205 for Sheffield.

approve rates it deems reasonable under federal law. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates comply with the federal regulations, the burden of proof is on the cable operator to demonstrate that its initial rates for the basic service tier and accompanying equipment, or proposed increases in these rates, 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) ¶ 129; see also 47 C.F.R. § 76.937(a). In order that rates be adjusted on FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(ii)(A); 47 C.F.R. § 76.922(e)(iii)(A). Although cable operators may project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(ii)(A). With respect to equipment and installation costs on FCC Form 1205, subscriber charges shall not exceed charges based on actual cost determined in accordance with the requirements of 47 C.F.R. § 76.923. 47 C.F.R. § 76.923(a)(2). Accordingly, the Cable Division must determine that upon a showing by Century, the rates are in compliance with the Cable Act and 47 C.F.R. §§ 76.922 and 76.923.

III. DISCUSSION AND ANALYSIS

At the public hearing, the Cable Division questioned Century about aspects of its filings. Century adequately addressed these questions, either at the hearing or in its responses to the Cable Division's record requests. The Cable Division finds that Century's FCC Form 1240s and FCC Form 1205s comply with the applicable federal law.

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, Century's FCC Form 1240s as filed on January 29, 1999 for Great Barrington, Lee, Lenox, Sheffield and Stockbridge.

Further, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Century's FCC Form 1205s as filed on January 29, 1999 for Great Barrington, Lee, Lenox, Sheffield and Stockbridge.

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

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

s/ Alicia C. Matthews

**Alicia C. Matthews
Director**

* Formally, the "Division of Community Antenna Television" under G.L. c. 166A, § 2.

APPEALS

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

