

THE COMMONWEALTH OF MASSACHUSETTS

Department of Telecommunications and Energy  
**Cable Television Division**

In the Matter of ) Docket No. CHA Y-00 (Phase I)  
) Date Issued: November 30, 2000  
)  
Charter ) Auburn, CUID MA 0073 North Brookfield, CUID MA 0308  
Communications ) Boylston, CUID MA 0260 Northborough, CUID MA 0197  
Entertainment I, ) Brookfield, CUID MA 0335 Northbridge, CUID MA 0180  
L.L.C. ) Charlton, CUID MA 0309 Oxford, CUID MA 0120  
) Chicopee, CUID MA 0087 Paxton, CUID MA 0304  
) Dudley, CUID MA 0036 Southborough, CUID MA 0259  
) East Brookfield, CUID MA 0312 Southampton, CUID MA 0184  
) East Longmeadow, CUID MA 0092 Southbridge, CUID MA 0029  
) Easthampton, CUID MA 0107 Spencer, CUID MA 0043  
) Grafton, CUID MA 0177 Sturbridge, CUID MA 0209  
For a ) Hampden, CUID MA 0103 Upton, CUID MA 0242  
Determination ) Hinsdale, CUID MA 0313 West Boylston, CUID MA 0319  
of ) Holden, CUID MA 0179 West Brookfield, CUID MA 0305  
Cable Television ) Lanesborough, CUID MA 0300 West Stockbridge, CUID MA 0311  
Rates ) Leicester, CUID MA 0044 Westborough, CUID MA 0198  
) Ludlow, CUID MA 0081 Wilbraham, CUID MA 0054  
) Millbury, CUID MA 0121 Worcester, CUID MA 0018

**RATE ORDER**

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## I. INTRODUCTION

On December 3, 1999, Charter Communications Entertainment I, L.P. (“Charter” 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 individual Federal Communications Commission (“FCC”) Form 1240s for 26 communities in which it has cable franchises.<sup>1</sup> Pursuant to 47 C.F.R. § 76.933(g), Charter put its proposed BST programming rates into effect on March 1, 2000.

On February 3, 2000, Charter notified the Cable Division that it intended to restructure its programming tiers in Brookfield, Charlton, East Brookfield, North Brookfield, Hinsdale, Lanesborough and West Stockbridge (the “former Pegasus communities”)<sup>2</sup> to create a distinct BST and cable programming services tier (“CPST”). The Cable Division requested that Charter file appropriate rate forms to justify the BST rates that Charter put into effect on March 1, 2000. On June 19, 2000, Charter filed in response the FCC Form 1230s the Cable Division had previously approved for these communities in 1996. Pegasus Cable Television, Inc., Brookfield et al., Y-94 COS, Y-96 SMA (issued March 29, 1996) (the “Pegasus Rate Order”).

On July 12, 2000, the previously unregulated Town of Upton requested that the Cable Division regulate its rates.<sup>3</sup> Accordingly, on August 11, 2000, Charter filed an FCC Form 1240 for Upton. Charter also filed its nationwide FCC Form 1205 for the fiscal year ending December 31, 1999 to support its equipment and installation rates in Upton.<sup>4</sup>

The Cable Division held a public and evidentiary hearing on Charter’s pending filings in Southampton on September 27, 2000. The Towns of Ludlow, Northborough and Southampton intervened in this proceeding. The evidentiary record includes 37 Charter exhibits, seven Cable Division exhibits consisting of Charter’s responses to our

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<sup>1</sup> These 26 franchises are Auburn, Boylston, Chicopee, Dudley, East Longmeadow, Easthampton, Grafton, Hampden, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southborough, Southbridge, Southampton, Spencer, Sturbridge, West Boylston, West Brookfield, Westborough, Wilbraham and Worcester. Charter acquired these franchises from Greater Media Cable on June 30, 1999.

<sup>2</sup> Charter acquired the cable franchises for these communities on November 15, 1999 from Avalon Cable of New England, LLC (“Avalon”). These communities had previously been transferred to Avalon on July 18, 1998 by Pegasus Cable Television, Inc.

<sup>3</sup> Charter acquired the Upton franchise from Greater Media Cable on June 30, 1999.

<sup>4</sup> Under federal law, Charter may file a single nationwide FCC Form 1205 for all of its communities. 47 U.S.C. § 543(a)(7); 47 C.F.R. § 76.923(c)(1) and (3).

information requests, and three responses to record requests posed by the Cable Division. No briefs were submitted by any party.

This Rate Order will only address Charter's FCC Form 1240 and FCC Form 1205 filings. The FCC Form 1230 filings for the former Pegasus communities will be addressed in a separate Rate Order.

## 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 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. In addition, the Cable Division shall only 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 the proposed rates are reasonable and comply with federal regulations, the burden of proof is on the cable operator to demonstrate that its proposed rates for the BST 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).

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. Local rate regulators, such as the Cable Division, are required to review the Company's FCC rate form filings to determine whether the rates are reasonable and in compliance with the Cable Act. 47 C.F.R. §§ 76.922, 76.923, 76.930.

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 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); 47 C.F.R. § 76.922(e)(2)(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)(2)(ii)(A).

The FCC Form 1205 allows a cable operator to establish rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. FCC Form 1205 Instructions (June 1996) at 7, 12-13. A cable operator is required to prepare FCC Form 1205 on an annual basis using information from the company's previous fiscal year. *Id.* at 2. A cable operator may not establish subscriber charges for equipment that exceed charges based on actual costs as calculated in accordance with the FCC's regulatory requirements. 47 C.F.R. § 76.923(a)(2).

### III. DISCUSSION AND ANALYSIS

#### A. Grafton Rate Reduction

On the Grafton FCC Form 1240, Charter proposed a BST maximum permitted rate ("MPR") of \$10.00 and an operator-selected BST rate of \$9.99 for the year commencing March 1, 2000 (Exh. Charter-7, Lines I9 and I10). In its supporting documentation, Charter reported on Worksheet 8, "True-Up Rate Charged," that it had charged a BST rate of \$8.90 between March and November 1999 (*id.*, Worksheet 8). However, the FCC Form 1240 indicated that Charter charged a BST MPR of \$9.20 in the year commencing March 1, 1999 (*id.*, Line A1). In response to a Cable Division information request, Charter reported that \$9.20 had been the rate charged, and submitted a revised FCC Form 1240 with a corrected Worksheet 8 (Exh. CTV-1). This revised form decreases Grafton's proposed BST MPR to \$9.85 (Exh. CTV-1, Line I9).<sup>5</sup> Accordingly, Charter reduced its BST rate to \$9.85, effective October 1, 2000, and in order to refund subscribers' overpayments, the Company issued a one-time credit of \$1.04 on subscribers' October bill (Hearing Audiotape, Side 1 at counter nos. 188-205; Charter fax of October 3, 2000). The Cable Division accepts as reasonable the Grafton FCC Form 1240 that Charter submitted in response to the Cable Division's information request, and approves the BST MPR established therein. We also approve Charter's payment of the refund to Grafton subscribers.

#### B. Channel Movements in Seven Western Massachusetts Communities

In seven western Massachusetts communities: Chicopee, East Longmeadow, Easthampton, Hampden, Ludlow, Southampton and Wilbraham, Charter had included channel movement and deletion amounts for both the true-up and projected periods on its

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<sup>5</sup> Under the methodology of the FCC Form 1240, an increase in the true-up rate decreases the proposed MPR. The Grafton BST MPR increased from \$9.20 in 1999 to \$9.85 in 2000, primarily because the previous FCC Form 1240 had a substantial negative true up resulting from BST MPR overcharges during 1998, when the Grafton BST MPR was \$10.18 (Exh. CTV-1, Line D6, and Worksheet 8, True-Up Period). The BST MPR also increased because of inflation and additional external costs (*id.* at Module I).

current FCC Form 1240s (Exhs. Charter-3, -5, -6, -8, -11, -18 and -25, at Lines F3, G3 and I3). However, the previous FCC Form 1240s for these communities had not reported any channel movements or deletions (Exh. CTV-6). In response to a Cable Division information request, Charter admitted that these amounts had been erroneously included on the current FCC Form 1240s for these communities, and filed revised FCC Form 1240s omitting them (*id.*). These revised FCC Form 1240s established lower BST MPRs in all seven communities. Accordingly, Charter also reduced its rates in these communities effective October 1, 2000, and in order to refund subscribers' overpayments, issued a one-time credit on subscribers' October bill (Hearing Audiotape, Side 1 at counter nos. 188-205, 465; Charter fax of October 3, 2000).<sup>6</sup> The Cable Division accepts as reasonable the FCC Form 1240s for Chicopee, East Longmeadow, Easthampton, Hampden, Ludlow, Southampton and Wilbraham that Charter submitted in response to the Cable Division's information request, and approves the BST MPRs established therein. We also approve Charter's payment of the refund to subscribers in these seven communities.

C. The Movement of Channels Between Tiers and the Sunsetting of 47 C.F.R. § 76.922(g)

Charter reported a different total number of BST channels on FCC Form 1240 from the number of channels shown on the rate cards in the former Greater Media communities (Exh. CTV-4, Exh. CTV- 5). On the Southampton FCC Form 1240, Charter removed a channel adjustment that had been added in the previous year's filing (Exh. CTV-7). Charter argued that the rules in 47 C.F.R. § 76.922(g), that provide for rate adjustments due to changes in the number of channels on regulated tiers, expired on December 31, 1997 pursuant to 47 C.F.R. § 76.922(g)(8)<sup>7</sup> (Charter letter of October 4, 2000). Thus, Charter argued that it is no longer bound by the FCC's rules applicable to the movement and deletion of channels.

The Cable Division acknowledges that the FCC did allow 47 C.F.R. § 76.922(g) to sunset without promulgating any further regulatory provisions for channel movements. However, this does not resolve the question of rate adjustments on FCC Form 1240 when channels are added to or removed from the BST. The Cable Division's responsibility as local rate regulator is to assure that BST rates are, in fact, fair and reasonable. G.L. c. 166A, § 15. Where there is an important omission in the FCC's regulatory scheme,

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<sup>6</sup> The reductions in the BST rate are as follows: Chicopee: \$0.09, East Longmeadow: \$0.27, Easthampton: \$0.07, Hampden: \$0.29, Ludlow: \$0.07, Southampton: \$0.09, Wilbraham: \$0.09 (Charter fax of October 3, 2000) . The one-time credits paid in October 2000 were: Chicopee: \$0.67, East Longmeadow: \$2.06, Easthampton: \$0.54, Hampden: \$2.15, Ludlow: \$0.54, Southampton: \$0.65, Wilbraham: \$0.70 (*id.*).

<sup>7</sup> 47 C.F.R. § 76.922(g)(8) states: "Sunset Provision. Paragraph (g) of this section shall cease to be effective on January 1, 1998 unless renewed by the Commission."

our statutory responsibility to set reasonable rates, and our concomitant responsibility to avoid unreasonable rates, requires us to establish an appropriate approach. After the FCC inadvertently, as we believe, allowed 47 C.F.R. § 76.922(g) to sunset without further addressing the channel addition and deletion issue, we realized that a significant problem existed with respect to BST channel movements and deletions, if the BST MPR could not be adjusted to remove associated residuals.<sup>8</sup> If we were to accept Charter's position, it would follow that any residual associated with a channel moved from the BST would not move with that channel. Indeed, a cable operator could theoretically eliminate most of its BST channels and still lawfully retain the same rate. Clearly, this would produce a result not consistent with the goal of attaining reasonable rates. The Cable Division will continue to require operators to adjust for the addition and deletion of BST channels, in order to assure the reasonableness of the rates being charged to Massachusetts subscribers. Charter may either refile its current FCC Form 1240s with the appropriate adjustments, or adopt these adjustments on a going forward basis in its next FCC Form 1240 filings.

D. The Rate Filings for Upton

On July 12, 2000, the Town of Upton ("Upton") requested that the Cable Division regulate its BST rates. Thus, the Cable Division notified Charter of Upton's request, and directed the Company to file the appropriate FCC Forms. In response, Charter filed only FCC Forms 1240 and 1205 (Exh. Charter-29, Exh. Charter-30). The Company explained that a complete set of filings on FCC Forms 1200 and 1210 carried forward to the current FCC Form 1240 was not available (Charter letter of September 8, 2000). Charter reported that the former franchise holder, Greater Media Cable, did not prepare a complete set of FCC filings for its unregulated communities, and that the required historical information is not available to Charter in order to prepare these forms today (*id.*). At the public hearing, Charter stated that in lieu of having to create rate forms not based solely on accurate information, the Company would agree not to increase the BST rate in Upton over the current level reported on its FCC Form 1240 for the next rate year commencing on March 1, 2001 (Hearing Audiotape, Side 2 at counter nos. 321-326). Charter also reported that its Upton BST rate has not been increased over its 1998 levels (*id.* at Side 1, counter nos. 316-320). The Cable Division recognizes Charter's difficulties in obtaining the necessary historical information, and finds Charter's proposal that it freeze its BST rate until the March 1, 2002 rate change to be reasonable. In order to

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<sup>8</sup> The sunset of 47 C.F.R. § 76.922(g) is under review at the FCC. See TCI TKR of Georgia, Inc., Request for Stay of Local Rate Order, Moultrie, GA, DA 00-406 (released February 25, 2000). A second case, TCI Cablevision of Dallas, Inc., Request for Stay of Local Rate Order, Farmer's Branch, TX, DA-1159 (released June 11, 1999), has been withdrawn for unrelated reasons. TCI Cablevision of Dallas, Motion to Withdraw Appeals of Local Rate Orders, Farmers Branch, TX, DA 00-1387 (released June 23, 2000). In both cases, TCI asked the FCC to stay rate orders where the local rate regulator had relied on 47 C.F.R. § 76.922(g)(8) to prevent TCI from changing residual costs due to channel movements. TCI argued that the complete sunset of 47 C.F.R. § 76.922(g) had been a clerical error by the FCC.

reflect this rate freeze on the Upton FCC Form 1240 that will establish rates beginning on March 1, 2002, that form must not include any true-up. Charter may recover only for inflation, changes in external costs and any channel movement and deletions occurring during the period covered by that filing. Based on these contingencies, the Cable Division will accept Upton's FCC Form 1240 as filed.

The Cable Division has also reviewed the FCC Form 1205 that Charter submitted to support Upton's equipment and installation rates. According to the current Upton rate card that was filed with the FCC Form 1205, the actual monthly charge for converters is \$2.25, and the monthly remote control charge is \$0.15 (Exh. Charter-30, Rate Card). These charges are substantially less than the \$4.14 converter charge and the \$0.18 remote control charge reported on the FCC Form 1205 (*id.*, at 5). However, the Upton rate card also reports a home maintenance fee of \$0.33 (*id.*, Rate Card). This charge does not appear on Charter's FCC Form 1205 (*id.*, at 5). Accordingly, the Cable Division directs Charter to either cease charging its home maintenance fee in Upton, or submit a rate justification for this charge. The Cable Division accepts the converter and remote control rates as reasonable.

The Upton rate card reports a charge of \$29.63 for an unwired home installation. The FCC Form 1205 reports an hourly service charge of \$22.61 (*id.*, at 4 and Rate Card). However, the FCC Form 1205, at Step B, does not provide any average hours for the various types of installation activity, including unwired home installations (*id.*, at 4). Moreover, the FCC Form 1205 does not include any charges for installation activities.<sup>9</sup> Accordingly, the Cable Division cannot determine whether Charter's installation charges in Upton are reasonable. We direct Charter to file data supporting its installation charges in Upton based on the nationwide FCC Form 1205 submitted for Upton. We further direct Charter to keep an accurate account of all amounts received from all types of installation activity performed during the review period, and from whom such amounts were paid.

#### 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, Charter's FCC Form 1240s as filed on December 3, 1999 for Auburn, Boylston, Dudley, Holden, Leicester, Millbury, Northborough, Northbridge, Oxford, Paxton, Southborough, Southbridge, Spencer, Sturbridge, West Boylston, Westborough and Worcester. The Cable Division hereby rejects the FCC Form 1240s filed on December 3, 1999 for Chicopee, East Longmeadow, Easthampton, Grafton, Hampden, Ludlow, Southampton and Wilbraham.

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<sup>9</sup> These charges are computed by multiplying together the hourly service charge and the average hours for the type of installation activity (*id.*, at 4).

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Charter's FCC Form 1240s as submitted on September 20, 2000 for Chicopee, East Longmeadow, Easthampton, Grafton, Hampden, Ludlow, Southampton and Wilbraham.

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Charter's FCC Form 1240 as submitted on August 11, 2000 for Upton.

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Charter's converter and remote control rates as submitted on August 11, 2000 for Upton. We direct Charter to file within 30 days of this Rate Order data supporting its installation charges in Upton based on the nationwide FCC Form 1205 submitted for Upton.

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**

## **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.