



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

In the Matter of	)	Docket No.	CTV 02-17
	)	Date Issued:	July 2, 2003
	)		
Charter	)	Auburn, CUID MA 0073	North Brookfield, CUID MA 0308
Communications	)	Barre, CUID MA 0329	Northborough, CUID MA 0197
Entertainment I,	)	Belchertown, CUID MA 0286	Northbridge, CUID MA 0180
L.L.C.	)	Berlin, CUID MA 0333	Oakham, CUID MA 0344
	)	Boylston, CUID MA 0260	Oxford, CUID MA 0120
	)	Brookfield, CUID MA 0335	Paxton, CUID MA 0304
	)	Charlton, CUID MA 0309	Pepperell, CUID MA 0281
	)	Chicopee, CUID MA 0087	Rutland, CUID MA 0328
	)	Dudley, CUID MA 0036	Southampton, CUID MA 0184
	)	East Brookfield, CUID MA 0312	Southborough, CUID MA 0259
For a	)	East Longmeadow, CUID MA 0092	Southbridge, CUID MA 0029
Determination of	)	Easthampton, CUID MA 0107	Spencer, CUID MA 0043
Cable Television	)	Grafton, CUID MA 0177	Sturbridge, CUID MA 0209
Rates	)	Groton, CUID MA 0282	Sutton, CUID MA 0292
	)	Hadley, CUID MA 0285	Upton, CUID MA 0242
	)	Hampden, CUID MA 0103	Uxbridge, CUID MA 0290
	)	Harvard, CUID MA 0334	West Boylston, CUID MA 0319
	)	Hinsdale, CUID MA 0313	West Brookfield, CUID MA 0305
	)	Holden, CUID MA 0179	West Stockbridge, CUID MA 0311
	)	Hubbardston, CUID MA 0330	Westborough, CUID MA 0198
	)	Lanesborough, CUID MA 0300	Westport, CUID MA 0297
	)	Leicester, CUID MA 0044	Wilbraham, CUID MA 0054
	)	Ludlow, CUID MA 0081	Worcester, CUID MA 0018
	)	Millbury, CUID MA 0121	

**RATE ORDER**

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## I. INTRODUCTION

On November 4, 2002, Charter Communications Entertainment I, L.L.C. (“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 separate Federal Communications Commission (“FCC”) Form 1240s for 27 communities that had been served by Greater Media Cable.<sup>1</sup> Charter also filed its nationwide FCC Form 1205 for the year ending December 31, 2001, to establish equipment and installation rates for all 47 of its regulated Massachusetts communities.<sup>2</sup> Charter implemented changes to its BST programming and equipment rates on February 1, 2003, and to its installation rates on March 1, 2003.

On April 9, 2003, the Cable Division held a public hearing in Boston on Charter’s pending filings. The Cities of Chicopee and Worcester and the Towns of Oxford and Wilbraham intervened in this proceeding. The evidentiary record includes 28 Charter exhibits and responses to record requests posed by the Cable Division. No party filed a brief.

## 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 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 cable 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). Cable operators may also project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable; however, 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 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. Instructions to FCC Form 1205, at 7, 12-13. The FCC Form 1205 is prepared on an

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<sup>1</sup> These communities are: Auburn, Boylston, Chicopee, Dudley, East Longmeadow, Easthampton, Grafton, Hampden, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southampton, Southborough, Southbridge, Spencer, Sturbridge, Upton, West Boylston, West Brookfield, Westborough, Wilbraham, and Worcester.

<sup>2</sup> Six Charter communities have not requested rate regulation: Brimfield, Douglas, Dunstable, Millville, Wales, and Webster.

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 standard under which the Cable Division must review rate adjustments on the 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 Section 623 of the Communications Act of 1934, as amended. 47 U.S.C. § 543; 47 C.F.R. §§ 76.922, 76.923, and 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 federal regulations. See 47 C.F.R. § 76.922(c). The Cable Division may also accept equipment and installation charges that are calculated in accordance with federal regulations. See 47 C.F.R. § 76.923. In addition, the Cable Division shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 U.S.C. § 543; 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 BST programming and accompanying equipment comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; 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. Copyright Costs in Western Massachusetts

Charter, like all cable operators, is required under federal law to pay a copyright royalty fee to the Federal Register of Copyrights on all gross receipts that it receives from each tier of service that contains any broadcast signals. 17 U.S.C. §§ 111(c), 111(d)(1). Federal regulations specifically provide that a royalty fee is due if a cable system transmits a broadcast station's programming as a distant signal beyond the broadcast station's service area. 37 C.F.R. § 256.2. These copyright costs are permitted external costs that cable operators may recover on FCC Form 1240, at Worksheet 7, Line 703. Instructions to FCC Form 1240, at 39.

For its Western Massachusetts communities, Charter's proposed BST MPR included an increase in its copyright costs for the projected period (Exhs. Charter-3, -5, -6, -8, -11, -17, -25, at Worksheet 7, True-Up Period and Projected Period, Line 703).

Charter provided copies of its most recent copyright filings for the Western Massachusetts communities, for the reporting periods July 1, 2001, through December 31, 2001, and January 1, 2002, through June 30, 2002 (RR-CTV-3). The Company's copyright filings demonstrate that WBZ-TV, which had been classified as a non-distant signal in 2001, is reclassified as a non-permitted distant signal for 2002 (*id.*). Under the copyright regulations, the percentage of revenue that cable operators must pay on non-permitted distant signals is higher than that paid on permitted signals. 37 C.F.R. § 256.2(c). This reclassification, together with increases in the gross revenues used to compute Charter's copyright charges, resulted in an increase in copyright costs between the true-up and projected periods. The Cable Division finds that these factors explain the increase in Charter's copyright costs, and we therefore accept these costs as reasonable.

B. Franchise Related Costs in Chicopee, Millbury, Northborough, and Westborough

Charter proposed to include an increased amount of franchise related costs ("FRCs") in its calculation of the BST maximum permitted rates ("MPR") for Chicopee, Millbury, Northborough, and Westborough (Exhs. Charter-3, -12, -13, -25, at Worksheet 7, True-Up Period and Projected Period, Line 707). The FCC's regulations provide that "[o]perators may project for increases in franchise related costs to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable." 47 C.F.R. § 76.922(e)(2)(ii)(A).

For Millbury, Charter explained that the increase in its projected FRCs was the result of financial commitments the Company made to Millbury in the renewal license dated April 1, 2003 (Hearing Audiotape, Side A, at Counter Nos. 148-198). Under the provisions of the April 1, 2003, license, Charter agreed to pay Millbury a one-time capital grant of \$100,000, an increase of approximately \$60,000 in required capital spending from the prior license. Given the specific requirement for franchise related expenditures in the license, we find that the FRCs increase that Charter proposed is of reasonably quantifiable amounts, and is reasonably certain.

In Westborough, Charter's projected FRCs increased from \$1.67 to \$1.75 per subscriber. Unlike in Millbury, there is no new license requirement in Westborough that would account for an increase in the FRCs. However, Charter submitted evidence to demonstrate that its actual costs of operating the Westborough PEG channels had increased by approximately \$4,000, or \$.08 per subscriber (RR-CTV-2). Given that the Company's actual PEG operating expenses increased, and the Company is required under its license to continue to support Westborough's PEG operations, we find that the projected costs Charter included on Westborough's FCC Form 1240 are reasonable.

The Town of Northborough, under its license with the Company, may request \$25,000 to support municipal access channels (RR-CTV-1). During the first four years of this license, Northborough did not request such funding. However, Charter testified, without specificity, that it expects Northborough to request this grant during 2003, the fifth year of the license (Hearing Audiotape, Side A, at Counter Nos. 199-253; RR-CTV-1). As a result, Charter included the costs associated with the grant on the FCC Form 1240.

Although Charter did not state the basis for its expectation that Northborough would request the grant this year, there appears to be no impediment or condition precedent to Northborough's ability to request the grant. Further, there is no evidence to suggest that the town will forego the grant. While a regulatory agency may not presume FRCs to be reasonably certain or quantifiable, the existence of the specific license requirement combined with the fact that the license is set for renegotiation within two years further increases the likelihood that Charter will expend this money during the projected period. We therefore find that Charter has established that it is reasonably certain that these costs will be incurred and therefore it is appropriate to include them in the rate calculation as reasonable projected costs. If, however, Northborough does not request the grant during the projected period, the Company may not include the costs associated with the grant in future filings without specific evidence establishing that the payment will be made.

We turn now to the issue of franchise related costs in Chicopee. On its previously filed FCC Form 1240, Charter included as a projected cost an FRC amount of \$30,000 citing an expectation of a \$300,000 capital grant in the new license (see RR-Chicopee-1). On the current form, Charter reported actual FRCs of \$0, indicating that the Company did not make any payments under the franchise (see *id.*). In this filing, Charter again included a projected FRC in the amount of \$25,000 (*id.*). The Company stated that it expected to sign a ten-year agreement with Chicopee in which it would be required to pay the city a capital grant of \$250,000 (*id.*).

Subsequent to the hearing, the Company filed with the Cable Division, pursuant to 207 C.M.R. § 3.06(2)(b), a copy of an agreement that the parties refer to as a "short-term renewal license." The agreement was executed on April 27, 2003, and will expire on October 27, 2003. The license, while requiring Charter to provide some funding to Chicopee, does not require the amount of funding represented on the FCC Form 1240. Further, according to our records, since the expiration of the ten-year license in February of 2001, the Company and Chicopee have entered into four "short-term" renewal licenses. As such, there is no record evidence to suggest that a long-term agreement containing the terms projected by the Company will be executed within the projected period, which ends on January 31, 2004. The uncertainty that this grant would be paid is increased by the fact that the Company has projected these costs at different levels for several years, only to remove them through the true-up

calculation in each instance. Accordingly, the \$250,000 capital grant that Charter expects to give Chicopee under the new license is not a reasonably certain event during the projected period, as required by the regulations, and may not be included on the Chicopee FCC Form 1240. The Cable Division, therefore, orders Charter to re-file its FCC Form 1240 adjusting the Line 707 FRC amount to reflect those payments that have been paid or are reasonably certain to be paid during the projected period.

C. FCC Form 1205: Charges for Converters and Remote Controls

On its current FCC Form 1205, Charter proposed an increase in the gross book value of equipment over that which it reported in the previous filing (Hearing Audiotape, Side A, at Counter Nos. 390-394). The Company attributed the increase to the introduction of new digital equipment (*id.*). However, while the MPR for converters had increased between its previous and current forms, the MPR for remote controls had remained constant (*id.* at Counter Nos. 399-404). Charter explained that when it purchased digital converters from one of its manufacturers, the accompanying digital remote control units were listed as “no-charge” on the invoice. (*id.* at Counter Nos. 405-415). This manufacturer, however, did charge the Company for additional remote controls that the Company would deploy as replacement units and as multiple remotes per converter (*id.* at Counter Nos. 416-420). The issue is how the manufacturer’s accounting practice affects the Company’s calculation of both its converter and remote control rates.

Lease rates are based on the total unit cost divided by the number of units in service. Instructions to FCC Form 1205, at Step C, Line 16. If the number of units is increased without any corresponding increase in cost, the per unit lease rate would decrease as the costs are spread over more units. Charter however removed from the calculation the remote control units that it obtained “free of charge” (RR-CTV-7(d)). Thus, with respect to the rate for remote control units, subscribers do not benefit from any cost averaging.

Further, the fact that the manufacturer charges for remote control units purchased separately from converters confirms that there are costs associated with supplying remote control units. This manufacturer has chosen to include the costs of certain units, those purchased with converters, in the price of the converters. Since the cost of these remote control units is built into the converter costs, a cable operator that charges the converter MPR and the remote MPR would be collecting twice for the same unit: first for the remote itself, since the lease rate is not diminished by the “free” units and second, as part of the converter price since the cost of the “free” units is built into the converter units’ cost.

Charter’s FCC Form 1205 under review establishes for its converters a proposed MPR of \$6.60 and an operator-selected rate of \$3.96, \$2.64 less than

the MPR (Exh. Charter-28, at 6). Charter proposes an MPR for remote controls of \$0.20, the same as its operator selected rate (*id.*). Since Charter charges its subscribers a converter lease rate that is lower than its converter MPR by an amount that exceeds its remote control MPR, the issue of whether any remote control cost may be included within the converter unit lease rate is moot at this point. If, in the future, Charter establishes a converter lease rate in line with its MPR the Cable Division will revisit this issue.

The Cable Division therefore finds it unnecessary at this time to further investigate the accounting methodology Charter has used to record the free of charge remote control units on its books. We will accept Charter's charge for remote controls and converters as established in this proceeding as reasonable and appropriate.

D. Monthly Home Wiring Rate

Charter proposed to increase its monthly home wiring MPR from \$0.42 to \$0.53 (RR-CTV-4). Charter's calculation of the current year's rate included capital costs as well as maintenance hours (*id.*). Charter stated that it included capital costs because they had been a component of the calculation employed by Greater Media, a predecessor operator (Hearing Audiotape, Side A, at Counter Nos. 470-480). However, Charter also explained that when it calculated its home wiring maintenance hours, it did not use exactly the same methodology as Greater Media did, because Charter had available actual year to date call information from its monthly technical operations reports (RR-CTV-7(a)).

In Charter's FCC Form 1205 proceeding that commenced in October 2000, Charter did not include a justification for a home wiring rate but, rather, Charter calculated a home wiring rate by creating an "off-form" calculation. See Letter from Denise M. Jones, Charter Communications, to Cable Television Division (Jan. 17, 2001). Specifically, Charter's calculation was based on the number of service calls multiplied by the average time for a service call (.75 hours) to arrive at the number of hours required for home wire maintenance. Id. Unlike Charter's predecessor operators, Charter did not include any capital costs but did include greater repair hours. Id. While we found the rate reasonable, we ordered Charter to include the off-form calculation on the next FCC Form 1205 filed. Charter Communications Entertainment I, L.L.C., CTV 01-2, at 7 (2002).

On the subsequent filing, Charter included a home wiring calculation on Schedule C of the FCC Form 1205. Charter indicated that it was attempting to replicate Greater Media's methodology, which included a capital cost component. This form was based on nation-wide data even though the Company only applied this charge in Massachusetts. The Company submitted a revised FCC Form 1205, which included the previous proceedings off-form calculation based on Massachusetts-only data.



Charter Communications Entertainment I, L.L.C., CTV 01-8 (2002); RR-CTV-12. In submitting the latter form, Charter emphasized the benefits of regulatory certainty and ease of comparison achieved by using a consistent methodology (id.).

Operators have flexibility when establishing the methodology used in calculating equipment rates. 47 C.F.R. § 76.923. Once a methodology is established, however, we would expect a consistent application of the method from year to year. Any deviation from the approved methodology must be explained and approved. Charter indicated that it was attempting to use the same methodology as Greater Media had used. However, in the pending filing, Charter once again is attempting to adjust that methodology by including capital costs along with the maintenance costs. While Charter's inclusion of capital costs is consistent with the methodology of Greater Media, Charter's calculation of maintenance hours is not consistent with such methodology. The adjusted methodology Charter has proposed has produced a rate increase not because of increased costs, but solely as a function of how the Company has calculated the repair hours.

While the Cable Division would expect some variation in maintenance hours because Charter used actual rather than estimated data, the magnitude of the difference is far greater than reasonably anticipated. Moreover, despite Charter's contention that its calculation includes maintenance hours associated with the Pepperell and Avalon systems, the addition of these hours to those of Greater Media still fails to sufficiently justify the increase in maintenance hours and ultimately costs. Those systems, acquired by Charter prior to its acquisition of Greater Media, are far smaller and when their repair hours are added to those of Greater Media, the total hours are still far less than those used by Charter in the current forms calculation. We do not consider it appropriate for Charter to use varied methods in order to maximize a rate that in 1994 was calculated and unbundled from programming costs in a certain way. Since subscribers are receiving no additional benefits (such as newer converters), it would be unfair to now allow for an increase in the home wiring rate strictly related to a change in methodology without a corresponding decrease in the unbundled programming rate.

Given that Charter has failed to provide sufficient support for its proposed methodology and that we determine that the rate calculated hereunder is unreasonable, we reject the Company's calculation of the home wiring maintenance fee. We direct the Company to submit a revised FCC Form 1205 utilizing the methodology that has been approved in the two prior forms in order to maintain consistency in the home wiring rate calculation. In the next filing, Charter may propose an alternate methodology but must provide support for such as well as a comparison to the approved methodology. We note that despite Charter's proposed home wiring MPR of \$0.53, the Company's selected rate in any of its communities does not exceed \$0.33, a rate we determined was reasonable. Charter Communications Entertainment I, L.L.C.,

CTV 01-8, at 9 (2002); Exh. Charter-28, at 6. Charter may continue to charge this rate pending our review of its filing made in compliance with this Order.

IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby approves Charter's FCC Form 1240s as filed on November 4, 2002, for Auburn, Boylston, Dudley, East Longmeadow, Easthampton, Grafton, Hampden, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southamptton, Southborough, Southbridge, Spencer, Sturbridge, Upton, West Boylston, West Brookfield, Westborough, Wilbraham, and Worcester.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Charter's FCC Form 1240 as filed on November 4, 2002, for Chicopee. The Cable Division directs Charter to refile its FCC Form 1240 for Chicopee in accordance with this Rate Order, and to file a refund plan for its BST overcharges resulting from its treatment of franchise related costs, on or before July 18, 2003.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Charter's FCC Form 1205 as filed on November 4, 2002, for Auburn, Barre, Belchertown, Berlin, Boylston, Brookfield, Charlton, Chicopee, Dudley, East Brookfield, East Longmeadow, Easthampton, Grafton, Groton, Hadley, Hampden, Harvard, Hinsdale, Holden, Hubbardston, Lanesborough, Leicester, Ludlow, Millbury, North Brookfield, Northborough, Northbridge, Oakham, Oxford, Paxton, Pepperell, Rutland, Southamptton, Southborough, Southbridge, Spencer, Sturbridge, Sutton, Upton, Uxbridge, West Boylston, West Brookfield, West Stockbridge, Westborough, Westport, Wilbraham, and Worcester. The Cable Division directs Charter to refile its FCC Form 1205 on or before July 18, 2003, utilizing a methodology for calculating home wiring rates that is consistent with its previously approved FCC Forms 1205.

**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 seven days of the filing of the initial petition for appeal.