



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

RATE ORDER

CTV 03-6

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240 and 1205 filed by Charter Communications Entertainment I, L.L.C.

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I. INTRODUCTION

On October 31, 2003, Charter Communications Entertainment I, L.L.C., d/b/a Charter Communications-Massachusetts (“Charter” or “the Company”) filed for the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy’s review and approval proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Forms 1240 for 27 of the communities it currently serves.¹ The Company also filed for review and approval a nationwide FCC Form 1205 with proposed equipment and installation rates for the 12-month fiscal year ending on December 31, 2002, for all 47 of its regulated Massachusetts communities. Pursuant to FCC regulations, Charter’s proposed BST programming, equipment, and installation rates for the current period became effective on February 1, 2004. See 47 C.F.R. § 76.933(g).

The Cable Division held two days of hearings in our offices, on March 16, 2004, and on May 25, 2004.² The City of Worcester filed a petition to intervene in this matter, and the Cable Division granted such petition. The Town of Wilbraham was admitted as an interested person. The evidentiary record consists of Charter’s rate forms admitted as Charter Exhibits 1 through 29 and Charter’s responses to information requests admitted as Exhibits CTV-1 through 19. The record also includes Charter’s responses to 13 record requests issued by the Cable Division, designated as RR-CTV-1 through 13.

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 (“FRCs”) to the extent they are reasonably certain and reasonably quantifiable; however, such

¹ Charter did not file FCC Forms 1240 for the 20 regulated communities where rates were previously calculated based on small system rules. In addition, the communities of Brimfield, Douglas, Dunstable, Millville, Wales, and Webster have not requested rate regulation.

² The second hearing date was scheduled to ensure that proper notice was provided to the communities of Hinsdale, Lanesborough, and West Stockbridge, as well as to allow Charter to produce a qualified witness to testify to the financial aspects of the forms.

projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(i)

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 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 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 (1993) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

III. DISCUSSION AND ANALYSIS

A. FCC Forms 1240

1. Copyright Costs

With respect to copyright costs included on the FCC Form 1240, a cable operator is required 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 station signal that is classified as a distant signal, i.e., beyond the reach of the broadcast station's off-air signal. 17 U.S.C. §§ 111(c), 111(d)(1); 37 C.F.R. § 256.2. A cable operator is permitted to recover these royalty fees, or copyright costs, as external costs on FCC Form 1240. See Instructions to FCC Form 1240, at 39. On its FCC Forms 1240 for certain western Massachusetts

communities, Charter reported a reduction in copyright costs (Exhs. Charter-3, -5, -6, -8, -11, -17, -26).³ Charter explained that WBZ-TV had been reclassified as a non-distant signal, resulting in reduced copyright costs (Exh. CTV-2).

The reclassification of WBZ-TV and the resulting reduction in copyright costs are reasonable and appropriate in this filing. However, in the prior rate proceeding, the Cable Division investigated an increase in copyright costs associated with WBZ-TV. Charter Communications Entertainment I, L.L.C., CTV 02-17 (2003) (“2003 Rate Order”). There, Charter provided evidence that the increase was due to the classification of WBZ-TV as a non-permitted distant signal. Id. at 3. In approving the increase, the Cable Division specifically noted “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. Because the Cable Division had approved the increased copyright costs in the previous filing based on information provided by Charter that has been subsequently shown to be erroneous, we questioned the appropriateness of reclassifying WBZ-TV in the current filing without correcting the prior year’s form (see RR-CTV-5, -12). When completing the FCC Form 1240, the cable operator first enters its current BST maximum permitted rate (“MPR”). This figure serves as the basis for calculating its proposed BST MPR. Instructions to FCC Form 1240, at 4, 12. Given the manner in which the FCC Form 1240 derives information from the prior year’s form, uncorrected errors can impact rates on a going forward basis inappropriately. Therefore, while the Company’s copyright cost calculation appears appropriate in this filing, the error made on the previous filing affects the MPR going forward.

In response to the Cable Division’s concerns, Charter submitted an amended FCC Form 1240 for both the previous and current filing periods for each of the affected communities (RR-CTV-12). In addition, Charter, on its own volition, submitted a refund plan showing the reduction to the BST MPR and the credit to be paid to subscribers for the overcharge (id.). Charter noted that the refund plan would be implemented for the August 2004 billing cycle (id.).

Upon investigation, we find that Charter has appropriately recalculated its copyright costs for the affected communities to reflect the removal of the copyright costs from both the previous and current FCC Forms 1240. In addition, we find that the refund plan Charter submitted appropriately reimburses subscribers for any overcharges resulting from this copyright cost issue. We conclude that the resulting copyright costs as well as the refund plan are just and reasonable and in compliance with applicable law.

³ The affected communities are Chicopee, East Longmeadow, Easthampton, Hampden, Ludlow, Southampton, and Wilbraham.

2. Franchise Related Costs

Charter proposed to reduce its projected FRCs in four communities as compared with the projected costs included in its prior filing (Exhs. Charter-4, -13, -24, -25; RR-CTV-7; Exh. CTV-5; Tr. at 44, 46-48). In support, Charter stated that renewal licenses were not finalized in Dudley, West Brookfield, or Westborough at the time of this filing, and Northborough had not yet requested payment of an agreed-upon grant (RR-CTV-7; Exhs. CTV-1, -5, -8, Tr. at 44, 46-48). The Company further testified that based on the directive in the prior rate order, it was taking a conservative approach and would only include increases in FRCs once licenses were renewed and where an amount to be paid and amortized on an annual basis could be quantified (Tr. at 43-44; see also 2003 Rate Order at 3-5). Employing this “conservative approach,” Charter did not include any FRCs related to grants that may be contained in the renewal licenses for Dudley, Westborough, or West Brookfield nor did the Company include any FRCs in its current period projections on the FCC Form 1240 filed for Northborough (RR-CTV-7; Exh. CTV-5).

In our prior rate order, the Cable Division investigated whether the Company inappropriately included FRCs in its calculation of the BST MPR. See 2003 Rate Order at 3-5. There, the Company had removed through the true-up mechanism previously projected increases in FRCs that were not incurred, but then had again included those increases in its projections for the next period. Id. at 4. The Cable Division noted under FCC regulations, a cable operator may include increases to FRCs in its projections “to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable.” Id. at 3, citing 47 C.F.R. § 76.922(e)(2)(ii)(A). As a result, the Cable Division required Charter to refile its FCC Form 1240 for one community because the Company had not demonstrated that the execution of a long-term license was imminent or that the projected FRCs were reasonably certain. Id. at 4-5. The Cable Division allowed inclusion of FRCs for the other communities because licenses were in place and the projected costs were reasonably certain. However, we specifically noted for Northborough that if it “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.” Id. at 4.

We find that the Company’s conservative approach for projecting reduced FRCs is consistent with the FCC’s reasonably quantifiable and reasonably certain standard and our directives and is therefore an appropriate methodology. Under a conservative approach, subscribers benefit by being required to pay only those FRCs that are quantifiable and certain, while cable operators are allowed to recover any FRCs paid but not projected through the true-up mechanism in the next filing. Further, we find that where Charter did include increases in FRCs, it provided evidence of the certainty of those increases (see Exhs. CTV-3, -4, -6, -7). Specifically, in the communities of Leicester, Millbury, Oxford, and Paxton, Charter projected increases in FRCs due to increases in grants either having been included in executed renewal

licenses or grant payments having actually been made (id.). As such, we find that the Company has appropriately included increased FRCs only for those communities where the costs are reasonably quantifiable and reasonably certain.

B. FCC Form 1205

On October 31, 2003, Charter filed a nationwide FCC Form 1205 for the fiscal year ending December 31, 2002, to justify equipment and installation rates in its regulated Massachusetts communities effective from February 1, 2004, to January 31, 2005 (Exh. Charter-28). Cable operators are permitted to aggregate equipment costs on a franchise, system, regional, or company level. 47 U.S.C. § 543(a)(7); 47 C.F.R. § 76.923(c)(1). As such, Charter's filing of a nationwide FCC Form 1205 is appropriate.

The FCC Form 1205 filed by the Company contains "restated" data which, according to Charter, is based on changes in accounting methods made by the Company following a review by the Securities and Exchange Commission ("SEC") (Tr. at 62). While Charter filed a restated FCC Form 1205, the Company did not file the FCC Form 1205 that it had prepared prior to adjusting its financial statements. Charter clarified that the Company had already implemented the required accounting changes prior to the deadline for submission of its FCC Form 1205 to the Cable Division, and it therefore provided the Cable Division with the restated form (RR-CTV-1). Upon request, the Company provided the FCC Form 1205 as originally prepared and specifically noted that the restated form produced slightly lower permitted rates (id.).

In reviewing the restated FCC Form 1205, we determine that the Company used the methodology approved in the 2003 Rate Order for calculating the home wiring maintenance fee. In addition, all other rate calculations are consistent with federal law and regulations. Therefore, based on the Cable Division's review of Charter's original and restated FCC Forms 1205, and supplemental evidence provided to the Cable Division, we conclude that the proposed equipment and installation rates established by the restated FCC Form 1205 are just and reasonable, and in compliance with applicable law.

C. Refund Plan

When Charter submitted its annual filing, it also notified the Cable Division that, on its own motion, the Company had implemented reduced rates in all communities for installations and remote controls on August 28, 2003, and had eliminated converter rates for BST-only

subscribers on October 13, 2003.⁴ Letter from Robert J. Munnely, Jr., Attorney, Murtha Cullina LLP to Alicia Matthews, Director, Cable Television Division (Oct. 31, 2003) at 2. The Company submitted a plan for refunding overcharges collected between February 1, 2003, and the dates the rate reductions took effect, with interest accruing to the date the refunds were implemented ("Refund Plan"). Letter from Robert J. Munnely, Jr., Attorney, Murtha Cullina LLP to Alicia Matthews, Director, Cable Television Division (Dec. 2, 2003). The Company also testified that it implemented its Refund Plan in mid-December 2003 (Tr. at 14; RR-CTV-2). To support its Refund Plan, the Company provided a restated FCC Form 1205 for the prior period ("Restated FY01 1205") (Exh. Charter-29).

In the previous proceeding, the Cable Division approved rates proposed on Charter's nationwide FCC Form 1205 filing for the year ending December 31, 2001 ("Approved FY01 1205"). See 2003 Rate Order. These rates were effective for the period February 1, 2003, to January 31, 2004. In submitting a Refund Plan, the Company explained that subsequent to issuance of the 2003 Rate Order, certain accounting changes were made based on an internal company audit conducted in response to SEC concerns (Tr. at 58-62; Exh. CTV-9). Specifically, Charter stated that the restatement of its annual SEC 10-K filing for the year ending December 31, 2001, affected its Approved FY01 1205 (Tr. at 12). For example, Charter indicated that there were a number of costs that had been capitalized that were reclassified as operating expenses (Tr. at 13, 58-62; Exh. CTV-9). In addition, the Company stated that it made other changes relative to converters provided to BST-only subscribers as well as the interest amount used to arrive at the grossed up interest rate (Tr. 62-65; RR-CTV-11).

Given that Charter restated its annual 10-K filing to address SEC concerns, and that this restatement affected the rates established by the Approved FY01 1205, the Cable Division finds it appropriate that the Company, on its own motion, reduced or eliminated certain equipment and installation rates and implemented a Refund Plan. Accordingly, we find the Refund Plan to be reasonable and in compliance with applicable laws and regulations.

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 Forms 1240 as filed on October 31, 2003, for Auburn, Boylston, Dudley, Grafton, Holden, Leicester, Millbury, Northborough, Northbridge, Oxford, Paxton, Southborough, Southbridge, Spencer, Sturbridge, Upton, West Boylston, West Brookfield, Westborough, and Worcester.

⁴ The Company did not reduce monthly lease rates for other converters or the home wiring maintenance fee.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Charter's FCC Forms 1240 as filed on October 31, 2003, for Chicopee, East Longmeadow, Easthampton, Hampden, Ludlow, Southampton, and Wilbraham.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations Charter's BST MPR rates as submitted on July 16, 2004, for Chicopee, East Longmeadow, Easthampton, Hampden, Ludlow, Southampton, and Wilbraham.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts Charter's proposed Refund Plan as submitted on July 16, 2004, for Chicopee, East Longmeadow, Easthampton, Hampden, Ludlow, Southampton, and Wilbraham.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations Charter's restated FCC Forms 1205 as filed on October 31, 2003, 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, Southampton, Southborough, Southbridge, Spencer, Sturbridge, Sutton, Upton, Uxbridge, West Boylston, West Brookfield, West Stockbridge, Westborough, Westport, Wilbraham, and Worcester.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts Charter's proposed refund plan as submitted on December 2, 2003, related to its FCC Form 1205.

The attached schedule provides Charter's current BST programming rates, as well as its previous, proposed, and approved maximum permitted BST programming rates. The attached schedule also provides, for all communities, Charter's previous and current equipment rates, as well as proposed and approved maximum permitted equipment rates.

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

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

Issued: July 20, 2004

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.