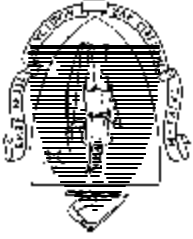


COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION



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

RATE ORDER

CTV 04-1

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Form 1205 filed by Charter Communications Entertainment I, L.L.C., proposing a monthly lease rate for CableCARDS.

APPEARANCES: Robert J. Spain, Jr.
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Charter Communications
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Worcester, MA 01606
FOR: CHARTER COMMUNICATIONS
Petitioner

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FOR: TOWN OF NORTHBOROUGH
Intervenor

I. INTRODUCTION

On April 20, 2004, Charter Communications, Inc. (“Charter” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy a proposed monthly lease rate for a new type of customer equipment, the CableCARD, on Federal Communications Commission (“FCC”) Form 1205.¹ As permitted by 47 C.F.R. § 76.923(o), on its FCC Form 1205, Charter prepared only Schedule C and Step E of the Worksheet for Calculating Permitted Equipment and Installation Charges (Exh. Charter-1).

As part of our review, the Cable Division held a public and evidentiary hearing in our Boston office on May 25, 2004. The Town of Northborough was admitted as an intervenor in this proceeding. The evidentiary record consists of Charter’s rate form admitted as Exhibit Charter-1 and Charter’s responses to Cable Division information requests entered as Exhibits CTV-1 through CTV-9. References to the transcript are cited as (Tr.). This order addresses the Cable Division’s findings with regard to Charter’s proposed lease rate for this type of customer premises equipment.

II. BACKGROUND

To encourage competition, Congress required the FCC to establish regulations that ensure the availability of navigational devices, such as converters, from sources other than a subscriber’s cable operator. See 47 U.S.C. § 549. However, the FCC recognized the need to keep digital cable signals safe from theft and unauthorized duplication. See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment, Second Report and Order and Second Further Notice of Proposed Rulemaking, CS Docket No. 97-80 and PP Docket No. 00-67, FCC 03-225, at ¶ 4 (2003) (“Plug-and-Play Order”). Therefore, the FCC implemented regulations that safeguard these signals and yet ensure compatibility between navigational devices sold at local retail electronics stores and digital services provided by a cable operator. See generally Plug-and-Play Order; see also 47 C.F.R. § 76.640.

¹ The filing was made for the following regulated communities served by Charter: 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.

While it is anticipated that many types of navigational devices will be available in the future, as an initial step, manufacturers are developing digital televisions that incorporate converter technology. A cable television subscriber that owns a digital cable-ready television with the converter technology incorporated will no longer be required to lease a converter box; however, the subscriber will need to lease a CableCARD in order to receive the cable operator's digital services (Tr. at 8-10).² The CableCARD is a device similar in size, but not in function, to a credit card (Tr. at 8). Formally, CableCARDS are known as "PODs," or point of deployment modules; while "CableCARD" is a term adopted for marketing purposes, these cards are also referred to as "security cards." Plug-and-Play Order at ¶ 19.

The FCC also adopted a regulation that requires cable operators to maintain an adequate supply of CableCARDS and ensure convenient access to CableCARDS for their subscribers by July 1, 2004. 47 C.F.R. § 76.640(b). In order to comply with the FCC's regulation, Charter will make CableCARDS available on July 1, 2004, and now seeks to establish a maximum permitted rate for CableCARDS leased to subscribers.³

III. DISCUSSION AND ANALYSIS

The standard under which the Cable Division must review the proposed rate 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. § 76.923. The Cable Division may accept equipment charges that are calculated in accordance with federal regulations. Id. 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.

² A downside of current CableCARD technology is the ability to receive only unidirectional digital television signals; a subscriber will not be able to receive two-way signals such as the interactive program guide or pay-per-view. Subscribers seeking to receive two-way signals will need to continue leasing converters.

³ Pursuant to federal rate regulations, cable operators are allowed to adjust basic service tier programming and equipment rates annually. 47 C.F.R. §§ 76.922(e)(1) and 76.924(n)(3). Charter follows the annual method, filing rate forms on November 1 for a rate change date of February 1. However, Charter filed this FCC Form 1205 pursuant to FCC rate regulations that provide for the filing of an FCC Form 1205 to establish the permitted charge for a new type of customer equipment at a time other than the cable operator's annual filing date. 47 C.F.R. § 76.923(n)(4). Under these regulations, the proposed rate may become effective 60 days after the date of the filing, unless the Cable Division, upon review and consideration, issues an order rejecting that rate. Id.

The burden of proof is on the cable operator to demonstrate that its proposed rates for 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 (1993) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

FCC rate regulations state that local franchising authorities have jurisdiction over “all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service.” 47 C.F.R. § 76.923(a). The CableCARD is available for lease from the Company for use in the subscriber's home. Charter testified that all signals, including the basic service tier, pass through the CableCARD (Tr. at 7-8). Accordingly, based on the information Charter provided, the Cable Division finds, at this time, that it has jurisdiction over Charter's monthly lease rate for CableCARDS.

The FCC Form 1205 requires a cable operator to calculate rates based on the cable operator's own actual costs. Instructions to FCC Form 1205, at 2. Further, the FCC's regulations state that subscriber charges for equipment shall not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2). In response to an Information Request, Charter stated that it had ordered only 275 CableCARDS, instead of the 1,000 units that it had estimated on its initial filing (Exh. CTV-6). The Company refiled an abbreviated FCC Form 1205 reflecting its actual costs (id.).

This revised form proposes a maximum permitted monthly lease rate of \$1.69 (id.).⁴ Charter used a weighted average to determine its capital costs per unit. Specifically, Charter indicated that it had purchased 100 units at \$75 per unit and 175 units at \$89 per unit for a weighted average price of \$84 per unit (Exh. CTV-4). Charter stated that the quantity of each model CableCARD purchased was directly linked to the extent that its cable systems relied on equipment from a particular manufacturer (Exh. CTV-7). Specifically, Charter indicated that Motorola equipment, the \$89 unit, supports 65 percent of Charter systems, and Scientific Atlanta equipment, the \$75 unit, supports the remaining 35 percent of Charter systems (id.). The Cable Division finds that given Charter's infrastructure, the purchasing scheme for CableCARDS is reasonable.

Using the gross book value based on this weighted average as a starting point, the monthly lease rate for CableCARDS is calculated using three primary components: repair

⁴ Charter also proposes an operator selected monthly lease rate of \$1.50 (id.).

costs, depreciation expense, and return on investment. See Instructions to FCC Form 1205, at 2-3. Given that the technology is new and presumably under warranty, Charter has appropriately not included any repair costs (Exh. CTV-6). With respect to depreciation, Charter has used a five-year straight-line depreciation method and has included nine months of depreciation on the form covering the period from the purchase of the units until the next rate change is scheduled to go into effect (id.). This amount has been properly reduced by accumulated depreciation to arrive at the net book cost upon which the 11.25 percent return on investment was calculated (id.). The Cable Division finds Charter's approach in calculating its monthly lease rate is reasonable and, hence, approves the Company's methodology. Further, we find the proposed maximum permitted monthly lease rate, based on the Company's actual costs, is reasonable and in compliance with applicable statutes and regulations.

Charter also proposed a rate of \$85.00 for lost or stolen CableCARDS (Letter from Robert J. Spain, Jr., to Cable Television Division dated May 10, 2004). The Company testified that it based this rate on the average cost of each type of CableCARD, i.e., those manufactured by Motorola and by Scientific Atlanta, plus a small administrative fee (Tr. at 9). As noted previously, the Company provided a breakdown of the costs of the CableCARDS from each manufacturer as well as the percentage of CableCARDS purchased from each manufacturer (Exh. CTV-7). Since the replacement cost is based on the actual costs to Charter, we find the proposed rate reasonable at this time. However, we are concerned that the rate may appear excessive and unduly punitive to ill-informed subscribers. As explained above, this new technology is quite different than that of a traditional set-top box. While the size of a set-top box ensures that it remains in plain sight as a continual reminder of the cable operator's ownership, due to the small size of a CableCARD, it could be easily removed from the television without much additional thought.

At the hearing, we asked the Company to provide the Cable Division with copies of the informational/educational materials and policy statements that will be provided to a subscriber who leases a CableCARD (See RR-CTV-1). Charter did not respond to this record request.⁵ Since the FCC has imposed an abbreviated review period, and we find that rates proposed reasonable at this time, we approved the Company's revised filing. However, Charter is directed to provide the Cable Division, for our review, the policy statement and informational materials related to the lease of CableCARDS. Charter is further directed to refrain from imposing the penalty rate with respect to any lease of a CableCARD commenced prior to our approval of said materials.

⁵ When contacted via telephone several days prior to issuance of this Rate Order, the Company represented that these materials are not yet prepared. This is a further concern given that CableCARDS will be available to subscribers by July 1, 2004.

IV. ORDER

Upon due notice, hearing and consideration, the Cable Division hereby rejects Charter's FCC Form 1205 as filed on April 20, 2004, 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, Southamptn, 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 as reasonable and in compliance with applicable statutes and regulations, Charter's revised FCC Form 1205 as submitted on May 17, 2004, as Exh. CTV-6, 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, Southamptn, Southborough, Southbridge, Spencer, Sturbridge, Sutton, Upton, Uxbridge, West Boylston, West Brookfield, West Stockbridge, Westborough, Westport, Wilbraham and Worcester.

Further, upon due notice and hearing, Charter must comply with all other directives contained in this order.

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

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

Issued: June 16, 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.