

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION

_____)
In the Matter of) Docket No. CTV 01-2
) Date Issued: March 11, 2002
)
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

In this proceeding, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy considers the reasonableness of the basic service tier (“BST”) programming, equipment and installation rates that Charter Communications Entertainment I, L.P. (“Charter” or “the Company”) proposed on FCC Forms 1240 and 1205, respectively.¹ The Company filed FCC Form 1240s for 27 of its communities that had been served by Greater Media Cable (“Greater Media”).² In these communities, except for Northborough, Charter did not implement any changes in its BST programming rates as a result of these filings; instead, the Company continued to charge the BST rates that had been in effect since March 1, 2000 (Exhs. Charter-1 through -27; RR-CTV-8). In Northborough, Charter proposed to reduce its BST programming rate (Exh. Charter-13). Charter’s FCC Form 1205, prepared on a nationwide basis using data for the year ending December 31, 2000, purports to justify Charter’s equipment and installation rates in all of its regulated Massachusetts communities (Exh. Charter-28). The equipment and installation rates under review in this proceeding became effective on March 1, 2001.

The Cable Division scheduled a public and evidentiary hearing on the proposed filings on September 20, 2001. However, Charter failed to properly notice the hearing, and therefore the hearing was rescheduled. Upon proper notice, the Cable Division conducted a hearing in Westborough on October 16, 2001. The City of Chicopee and the Towns of East Longmeadow, Grafton, Millbury, Northborough, Oxford, Paxton, Spencer, Sutton, Westborough, Westport and Wilbraham intervened in this proceeding, and the Towns of Hinsdale and Sturbridge appeared as Limited Participants. The evidentiary record includes 28 Charter exhibits, 11 Cable Division exhibits consisting of Charter’s responses to our information requests, and responses to record requests posed by the Cable Division, Chicopee, East Longmeadow, Oxford, Sutton and Westborough. The City of Chicopee filed a brief, and Charter filed a reply brief.

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

¹ For the procedural history of the FCC Form 1240 filings, see Notice of Procedural Schedule, CTV 01-2 (October 30, 2001).

² 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.

of 47 U.S.C. § 543 of the Communications Act of 1934, as amended (the “Communications 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 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 are reasonable and comply with federal regulations, the burden of proof is on the cable operator to demonstrate that its proposed rates for the basic service tier 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) (the “Rate Order”) 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 Communications Act. 47 C.F.R. §§ 76.922, 76.923, 76.930.

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. FCC Form 1205 Instructions at 7, 12-13. 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 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 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. 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)(iii)(2)(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).

III. DISCUSSION AND ANALYSIS

A. Digital Installation Charges

An inconsistency exists in the information Charter presented to the Cable Division concerning three digital installation rates Charter put into effect on March 1, 2001. In addition to the FCC Form 1205, Charter presented a detailed schedule listing the Company's charges, effective March 1, 2001, for every type of equipment and installation service that was reported on its FCC Form 1205 (Charter Letter of March 7, 2001, Attachment B; "March 1, 2001, Installation and Leased Equipment Rates for All Towns" (the "Schedule")). In every case, the Schedule reported charges that were either less than or equal to the permitted charges proposed on the FCC Form 1205 (*id.*; compare Exh. Charter-28, at 6).

However, in February 2001, Charter notified its subscribers on their monthly bills that new rates would become effective on March 1, 2001. According to this notice, three rates for digital installations exceeded those calculated on the FCC Form 1205 and reported on the Schedule.³ On the monthly bills, the charge for an aerial digital installation was reported as \$55.21, compared with the charge of \$50.89 shown on the FCC Form 1205 and the Schedule (Exh. Charter-28). Similarly, the monthly bills showed charges of \$65.39 for an underground digital installation and \$41.30 for a digital upgrade, compared with the charges of \$53.75 and \$33.92 shown on the FCC Form 1205 and the Schedule (*id.*).

In response to a Cable Division request, Charter confirmed that it was charging for these services the lower rates reported on the Schedule and proposed by the FCC Form 1205 (RR-CTV-7). Based upon our review of the FCC Form 1205, we find Charter's digital rates as proposed for these categories reasonable and in compliance with state and federal law. However, Charter's rate notifications to subscribers have not reported accurate charges for these services. The FCC's regulations provide that "cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change." 47 C.F.R. § 76.1603(c). Therefore, we direct Charter to provide written notice of the actual rates for these services to all subscribers. Charter may satisfy this requirement by bill insert, bill message or separate written notice. We further direct Charter to provide the Cable

³ The Cable Division's regulations require each cable operator to file its programming services, rates and charges, and samples of actual monthly bills, with us by March 15 of each year ("Billing and Termination Filing" or "B&T Filing") 207 C.M.R. §§ 10.01(2) and 10.02(6). Charter made this required filing on March 14, 2001 and March 15, 2001. The Cable Division hereby takes administrative notice of this filing pursuant to G.L. c. 30A, § 1(15) and 801 C.M.R. § 1.01(10)(h).

Division with a copy of the notice as soon as practicable, but no later than 45 days after the issuance of this Rate Order.

B. Home Wiring Maintenance Charges

Charter stated that it offers a home wiring maintenance service for which it proposed a fee. Charter further claims that the service is optional. The City of Chicopee (“Chicopee”) questioned whether the service was optional, and contended that even if it were, the rate was not calculated appropriately and violated the prohibition against negative option billing. We address these issues.

1. Negative Option Billing

The practice that is commonly referred to as “negative option billing” was prohibited by Congress in the Communications Act. 47 U.S.C. § 543(f). The Act states: “[a] cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name.” The Cable Division’s regulations similarly prohibit this billing practice. 207 C.M.R. § 10.02(7). In other words, a cable subscriber must actively request a service in order to be billed for it. The Act also makes it clear that silence is not assent: “a subscriber’s failure to refuse a cable operator’s proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.” 47 U.S.C. § 543(f).

Charter asserts that the home wiring maintenance service is not a new service (RR-Chicopee-2). Charter claims that the cost of home wiring maintenance service was embedded in the rates prior to the beginning of rate regulation in 1993 (RR-Chicopee-6). Charter explained that it merely separated out the cost of its wire maintenance program and listed it separately on subscribers’ bills (RR-Chicopee-2). Charter argues that the separate itemization of the charge is required to comply with the FCC’s rules ordering unbundling of rates (id.; see 47 C.F.R. § 76.923(b)). Therefore, Charter argues that it has not violated the prohibition against negative option billing.

According to Chicopee, Charter has admitted that when Greater Media initiated its home wiring maintenance charge in Chicopee, it did not specify that it was an optional charge (Chicopee Brief at 2; see RR-Chicopee-3). Chicopee concludes: “Charter is unlawfully charging subscribers for the home maintenance fee without subscribers’ affirmative request for same” (Chicopee Brief at 2).

In implementing cable television rate regulation, the FCC required that cable operators unbundle equipment and installation rates from programming rates. 47 C.F.R. § 76.923(b). The FCC held that the restructuring of equipment, including restructuring appropriate for implementing the Cable Act’s provisions, will not bring

the negative option provision into play if subscribers will continue to receive the same equipment. Rate Order at 5907, ¶ 441.

Thus, the question here is whether the home wiring maintenance charge is an unbundled charge for the same service that was previously offered. Charter provided a letter Greater Media had written to the Mayor of Chicopee, which stated: “[t]his 39-cent ‘Home Wiring Maintenance’ fee is not a new charge. It previously had been calculated into the Mini-Basic service rate, but now must be broken out separately under the federal regulations” (RR-Chicopee-3). This letter was accompanied by a new rate card, which listed the home wiring maintenance charge as a separate charge, with a footnote on the rate card explaining that this charge was currently included in the Mini-Basic service price (id.). This evidence supports Charter’s position that the fee is not a new charge in Chicopee. With respect to Greater Media’s communities generally, Charter stated that “[p]rior to the implementation of rate regulation ... Charter’s predecessor (Greater Media) did not separately charge customers for inside wiring maintenance and considered such service as part of the charge for the basic service tier” (RR-Chicopee-2). Charter explained that after the commencement of rate regulation “and in accordance with the mandate for cable operators to unbundle their programming service rates from equipment charges, Greater Media began to itemize separately on consumers’ bills the charge for inside wiring maintenance” (id.). This is confirmed by the Cable Division’s first rate orders for Greater Media: Greater Media Cablevision, Inc.; Auburn, Y-93 (1994), at 12; Greater Media Cablevision, Inc.; Easthampton, Y-93 (1994), at 11. Thus, we find that Greater Media unbundled its home wiring maintenance fee not only for Chicopee but for all of its Massachusetts communities.

Two other of Charter’s predecessor companies, United Video Cablevision, Inc. (“United Video”) and Pegasus Cable Television, Inc. (“Pegasus”) also obtained approval for a separate home wiring maintenance fee. The cost of the home wiring maintenance service was included in the rate prior to regulation. United Video Cablevision, Inc.; Barre, Y-93 (1994), at 9; Pegasus Cable Television, Inc.; Hinsdale, Y-94 COS, Y-96 SMA (1996), at 10. We find that United Video and Pegasus also established an unbundled home wiring maintenance charge in their first rate filings after rate regulation began. Accordingly, we conclude that the home wiring maintenance charge in the communities formerly served by Greater Media, United Video and Pegasus is not a new charge but the unbundling and continuation of a previous existing service.

The Cable Division, however, cannot confirm that a home wiring maintenance charge was unbundled by Amrac, which served Belchertown and Hadley prior to Charter. Charter submitted no evidence on this point and therefore has not met the burden of proof that this charge was unbundled. Thus, we must treat this charge as negative option billing. Charter must notify all of its subscribers in Belchertown and

Hadley of the charge's optional nature. The notice shall explain to existing subscribers in clear and precise terms what charges they will be responsible for if they do not elect the monthly home wiring maintenance service. Charter must provide subscribers with a simple method to affirmatively request the service, such as a check-off box on the payment slip. Charter must provide proof that subscribers were so notified within 60 days of the date of this Rate Order.

Charter emphasized that its wire maintenance service is currently presented to new subscribers as an optional service, and has presented the Cable Division with the information its customer service representatives provide to new subscribers (RR-CTV-5; RR-Chicopee-3; RR-Chicopee-4; RR-Chicopee-5). Even though we have found that in most instances Charter has not violated the FCC's and Cable Division's prohibition against negative option billing, it is clear from the testimony offered at the hearing that existing subscribers are generally not aware that this service is optional. Charter has expressed its willingness "to better promote the optional nature of the maintenance plan on a prospective basis" (Reply Brief at 2). We direct Charter to notify its subscribers, in writing, that the home wiring maintenance service is optional. The notice shall include a statement to the effect that subscribers may decline the monthly maintenance service plan and pay for service to home wiring at an hourly rate. Subscribers need not exercise an option in order to continue wire maintenance service. Again, Charter must provide proof that subscribers were so notified within 60 days of the date of this Rate Order.

The Cable Division further notes that Charter uses a number of different terms to describe its home wiring service, and in some instances, the variations exist on the rate card and the billing statement for the same community.⁴ We suggest that Charter standardize the terminology for this service on its future rate cards and billing statements provided to subscribers, issuing authorities and the Cable Division.

2. Rate Justification

According to Charter's Billing and Termination Filings, the charge for home wiring maintenance service varies from \$0.03 to \$0.33, depending on the system. Charter did not justify a home wiring maintenance charge on its national FCC Form 1205, at Schedule C and Step E (Exh. Charter-28). Instead, Charter provided a separate home wiring maintenance charge calculation that established a maximum

⁴ For example, according to Charter's latest Billing & Termination filing, in Worcester, the fee is called "Home Wiring Maint Fee" on the monthly billing statement, but "Home Maintenance Fee (covers Charter installed materials)" on the rate card. In Groton, it is called "Cable Safeguard" on the monthly bill, but "Home Maintenance Fee (covers Charter installed materials)" on the rate card." In Belchertown and Hadley, it is called "Wire Maintenance" on the monthly bill, and "Home Wiring Maintenance" on the rate card. In Chicopee, it is called "Home Wiring Maintenance" on both the monthly bill and the rate card.

permitted rate (“MPR”) of \$0.42 and attached this “off-form” calculation to the FCC Form 1205 (*id.*). Charter submitted a revised national FCC Form 1205 with a home wiring maintenance calculation included on Schedule C and Step E, which derived a nationwide home wiring maintenance charge of \$0.40 (RR-CTV-2).

Under either Charter’s off-form calculation included with the original FCC Form 1205, or the revised FCC Form 1205 calculation, the proposed MPR exceeds the rate being charged in all of its communities. The back-up information attached to the revised FCC Form 1205 provides additional support for the off-form data accompanying the original FCC Form 1205 submitted. This detail allows the Cable Division a more comprehensive understanding of the home wiring maintenance charge calculation as originally presented. Conversely, this same home wiring maintenance information, when used to support the revised FCC Form 1205, appears to raise as many questions as it answers. The scope of the home wiring maintenance calculation included on the revised FCC Form 1205 is far broader than that used in the original off-form calculation. In addition, the back-up information detailing the number of labor hours is consistent not with the revised form but with the original off-form calculation. In order to properly analyze and review the revised FCC Form 1205, the Cable Division would be required to conduct a new investigation, including holding an additional public hearing. Although the FCC Form 1205 Instructions contain no provision for off-form calculations, there is an FCC precedent for such calculations. In small system rate regulation, the FCC Form 1230 establishes a single rate that includes both programming and equipment. The FCC has concluded: “[o]perators may establish equipment rates in the manner they choose, so long as this results in equipment rates that comply with the 1992 Cable Act.” Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95-196, 10 FCC Rcd. 7393 (1995) at 7424, ¶ 63. While Charter’s off-form home wiring maintenance justification differs from presentations that we have reviewed in the past, we find that Charter has provided sufficient information, in both its original calculation and its responses to information and record requests, for us to evaluate this proposal and determine its reasonableness (Exh. Charter-28; Exh. CTV-9; RR-CTV-2). Based on the precedent found in the FCC’s small system rules, the Cable Division finds that in this instance, the Cable Division shall review the original FCC Form 1205 filed by Charter containing the off-form calculation for home wiring. We further find that the supporting data provided by Charter is sufficient for the Cable Division to conduct a detailed review.

We have reviewed the supporting data provided and find Charter’s proposed MPR for home wiring maintenance to be just and reasonable. In this proceeding, therefore, the Cable Division accepts Charter’s original FCC Form 1205 and accepts the off-form home wiring maintenance charge calculation. In future rate proceedings, we direct Charter to provide FCC Form 1205 filings that include home wiring justifications in Schedule C and Step E, and include only those subscribers who have a home wiring charge. The Cable Division must verify that rates being established for

both leased equipment and installations are calculated accurately and consistently. To this end, we have asked all operators to provide a consistent data presentation on an annual basis, which allows us to make comparisons to previous forms, and enables us to conduct an efficient and effective review of the proposed rates. Charter's next FCC Form 1205 filing, prepared in accordance with the requirements of this Rate Order, will enable us to accomplish this review.

C. Franchise Related Costs in Auburn, East Longmeadow, Southbridge, Spencer and Wilbraham

On Charter's FCC Form 1240s filed for Auburn, East Longmeadow, Southbridge, Spencer and Wilbraham, the actual franchise related cost ("FRC") element of the external costs reported on "Worksheet 7, External Costs, True-Up Period," exceeded the amounts projected on the previous forms (Exhs. Charter-1, -5, -19, -20 and -26). In response to information requests, Charter indicated that the cable licenses in these communities limit the amount of the FRC operating grants that can be included in subscribers' rates (Exhs. CTV-5 and -6). Charter admitted that on these communities' FCC Form 1240s, portions of the operating grants that should have been excluded from the true-up calculation were inadvertently included (*id.*). Charter therefore submitted revised FCC Form 1240s for these communities on August 17, 2001, that complied with the license provisions (*id.*).⁵ In every community, while the newly calculated proposed BST MPR was lower than the proposed BST MPR, it continued to exceed the operator selected rate being charged by the Company. The Cable Division has reviewed these revised filings and finds them in compliance with applicable law and that the rates proposed therein are reasonable.

D. Franchise Related Costs in Grafton

On Charter's FCC Form 1240 filed for Grafton, the FRC reported on Line 707 of "Worksheet 7, External Costs" rose from \$89,632.95 during the true-up period to \$129,320.95 during the projected period, an increase of \$39,688.00 (Exh. Charter-7). In response to an information request, Charter explained that it had incorrectly included within the FRC for the projected period an amount of \$55,688 for the annual operating grant, instead of the correct amount of \$30,008, a difference of \$25,680 (Exh. CTV-2). The Company submitted a revised FCC Form 1240 for Grafton on August 17, 2001,

⁵ See Auburn Renewal Cable Television License (June 28, 1993), at 48, Section 5.5(b)(ii); East Longmeadow Renewal Cable Television License (November 4, 1997), at 37, Section 6.2(c); Southbridge Renewal Cable Television License (January 11, 1994), at 47-48, Section 5.2(c) and (c)(ii), and Southbridge Renewal Cable Television License (June 18, 2001), at 49-50, Section 5.2(b)(i); Spencer Renewal Cable Television License (October 1997), at 22-23, Section 6.2(b); Wilbraham Renewal Cable Television License (March 25, 1997), at 49-50, Section 5.2(b)(i). These Renewal Licenses have been filed as public documents with the Cable Division pursuant to G.L. c. 166A, § 3. The Cable Division hereby takes administrative notice of these licenses pursuant to G.L. c. 30A, § 1(15) and 801 C.M.R. § 1.01(10)(h).

which reduced the FRC amount for the projected period by \$25,680, to \$103,640.95 (*id.*). The remaining \$14,008 of the FRC increase is comprised of \$10,600, which is the amount of a \$106,000 public capital access grant authorized in the renewal license that was amortized during the projected period,⁶ and a \$3,408 increase in salaries and maintenance costs for regular operating expenses (Exh. CTV-6). The Cable Division finds these adjustments to be reasonable. While Grafton's newly calculated proposed BST MPR was lower than the proposed BST MPR, it continued to exceed the operator selected rate being charged by the Company. The Cable Division has reviewed this revised filing and finds it in compliance with applicable law and that the rate proposed therein is reasonable.

E. Northborough Rate Reduction

Charter informed the Cable Division that it proposed to reduce Northborough's BST rate in the next billing cycle, and would apply a one-time credit for the rate difference retroactively to March 1, 2001 (Charter Letter of May 7, 2001). According to Charter, this decrease was the result of changes in certain external costs (Exh. Charter-13, cover letter). Charter proposed to reduce its Northborough BST rate from \$11.58 to \$11.16, effective March 1, 2001 (Exh. Charter-13, cover letter).

Under the FCC's rate regulations, "[i]n all events, a system must adjust its rates every twelve months to reflect any net decreases in external costs that have not previously been accounted for in the system's rates." 47 C.F.R. § 76.922(e)(2)(ii)(B). Charter has confirmed that the Northborough BST rate was decreased to \$11.16 in May 2001, and that a one-time credit of \$0.54 appeared on its May 2001 billing statements (RR-CTV-8). Charter also confirmed that it had previously reduced its Northborough BST rate from \$11.58 to \$11.43 in January 2001 (*id.*). The rate reduction to the \$11.16 established by the FCC Form 1240 and the credit back to March 1, 2001 satisfy the requirements of 47 C.F.R. § 76.922(e)(2)(ii)(B). The Cable Division finds that Charter's BST rate in Northborough, as so reduced, is reasonable and in compliance with state and federal law.

F. Southampton True-Up Adjustment

On Charter's FCC Form 1240 filed for Southampton, identical negative true-up balances appeared on Line H13, "Total True-Up Adjustment," and Line H15, "Remaining True-Up Adjustment" (Exh. Charter-17, at 4). However, no true-up was reported on Line H14, "Amount of True-Up Claimed for this Projected Period." The Instructions for FCC Form 1240 provide, at Line H14, that if Line H13 "is less than 0,

⁶ See Grafton Renewal Cable Television License (September 21, 2000), at 18, Section 20.4. This Renewal License has been filed as a public document with the Cable Division pursuant to G.L. c. 166A, § 3. The Cable Division hereby takes administrative notice of this license pursuant to G.L. c. 30A, § 1(15) and 801 C.M.R. § 1.01(10)(h).

you must pass it all through in this Projected Period.” FCC Form 1240 Instructions at 21. In response to an information request, Charter admitted that the true-up should have been claimed on Line H14 (Exh. CTV-4). The Company submitted a revised FCC Form 1240 for Southampton on August 17, 2001 (*id.*). This form correctly claimed all the true-up on Line H14; although Southampton’s newly calculated proposed BST MPR was lower than the proposed BST MPR, it continued to exceed the operator selected rate being charged by the Company (*id.*). The Cable Division has reviewed this revised filing and finds it in compliance with applicable law and that the rate proposed therein is reasonable.

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 May 7, 2001 for Boylston, Chicopee, Dudley, Easthampton, Hampden, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southborough, Sturbridge, Upton, West Boylston, West Brookfield, Westborough and Worcester.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Charter’s FCC Form 1240s as filed on May 7, 2001, for Auburn, East Longmeadow, Grafton, Southampton, Southbridge, Spencer and Wilbraham. The Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Charter’s FCC Form 1240s as filed on August 17, 2001, for Auburn, East Longmeadow, Grafton, Southampton, Southbridge, Spencer 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 FCC Form 1205 as submitted on March 7, 2001, 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 directs Charter to notify all subscribers of the charges for aerial digital installations, underground digital installations and digital upgrades, as established on the FCC Form 1205 approved by this Rate Order, in accordance with this Rate Order.

Further, upon due notice, hearing, and consideration, the Cable Division hereby directs Charter to notify all subscribers of the optional nature of the home wiring maintenance charge, in accordance with this Rate Order. The Cable Division further directs Charter to offer subscribers in Belchertown and Hadley the affirmative choice to accept or reject the home wiring maintenance charge, in accordance with this Rate Order.

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. 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.

