

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION

In the Matter of) Docket No. Y-99 INC, Y-99 EQU
) Date Issued: November 22, 1999
)
Charter) Auburn, CUID MA 0073 Northbridge, CUID MA 0180
Communications) Boylston, CUID MA 0260 Oxford, CUID MA 0120
Entertainment I,) Chicopee, CUID MA 0087 Paxton, CUID MA 0304
L.L.C.) Dudley, CUID MA 0036 Southborough, CUID MA 0259
) East Longmeadow, CUID MA 0092 Southampton, CUID MA 0184
) Easthampton, CUID MA 0107 Southbridge, CUID MA 0029
) Grafton, CUID MA 0177 Spencer, CUID MA 0043
For a) Hampden, CUID MA 0103 Sturbridge, CUID MA 0209
Determination) Holden, CUID MA 0179 West Boylston, CUID MA 0319
of) Leicester, CUID MA 0044 West Brookfield, CUID MA 0305
Cable Television) Ludlow, CUID MA 0081 Westborough, CUID MA 0198
Rates) Millbury, CUID MA 0121 Wilbraham, CUID MA 0054
) Northborough, CUID MA 0197 Worcester, CUID MA 0018

RATE ORDER

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- and -

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I. INTRODUCTION

On November 29, 1998, Greater Media Cable (“Greater Media”) filed with the Cable Television Division (“Cable Division”)¹ of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240s,² and proposed equipment and installation rates on FCC Form 1205s,³ for each of the above-captioned communities. Greater Media filed individual FCC Form 1240s for each community, and separate combined FCC Form 1205s for its Central Massachusetts⁴ and Western Massachusetts⁵ Systems. Pursuant to 47 C.F.R. § 76.933(g), Greater Media put its proposed BST programming, equipment and installation rates into effect on March 1, 1999. On June 30, 1999, Charter Communications Entertainment I, LLC (“Charter” or “the Company”) acquired Greater Media’s Massachusetts franchises, and thereupon assumed responsibility for Greater Media’s rate filings.⁶

¹ Formally, “division of community antenna television” under G.L. c. 166A, § 2. It was previously named the “community antenna television commission” under G.L. c. 166A, § 2 before it was merged into the Department of Telecommunications and Energy, effective November 25, 1997.

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.

³ The FCC Form 1205 allows a cable operator to annually adjust its costs of regulated cable equipment and installation. Pursuant to the FCC’s rate regulations at 47 C.F.R. § 76.923(n)(3), the FCC Form 1205 is filed on the same date the cable operator files its FCC Form 1240.

⁴ The Central Massachusetts FCC Form 1205 covers 19 communities: Auburn, Boylston, Dudley, Grafton, Holden, Leicester, Millbury, Northborough, Northbridge, Oxford, Paxton, Southborough, Southbridge, Spencer, Sturbridge, West Boylston, West Brookfield, Westborough and Worcester. Two communities in this system, Upton and Webster, have not requested rate regulation.

⁵ The Western Massachusetts FCC Form 1205 covers all seven of the system’s communities:
⁶ Chicopee, East Longmeadow, Easthampton, Hampden, Ludlow, Southampton and Wilbraham.

When Charter acquired Greater Media’s Massachusetts franchises, it already held franchises in 16 Massachusetts communities: Barre, Berlin, Brimfield, Douglas, Dunstable, Groton, Harvard, Hubbardston, Millville, Oakham, Pepperell, Rutland, Sutton, Uxbridge, Wales and Westport. These communities, now designated by Charter as its Northern Massachusetts System, are not included in this rate proceeding.

The Cable Division held a public hearing on Charter's pending filings in Auburn on August 17, 1999. The Towns of Easthampton and Northborough, and the City of Worcester intervened in this proceeding. The evidentiary record includes 26 Charter exhibits and three responses to record requests posed by the Cable Division. No briefs were submitted by any party.

On November 1, 1999, the Cable Division notified all parties to the proceeding that we intended to incorporate by reference into the record, rate information filed by the Company on March 12, 1999 for its Central Massachusetts communities as CATV Exhibit 1, and new monthly service rates filed by the Company on March 15, 1999 for its Western Massachusetts communities as CATV Exhibit 2. The Cable Division received no objections from any party.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

The standard under which the Cable Division must review rate adjustments on FCC rate forms is found in the FCC's rate regulations. Specifically, the regulations provide that the rate regulator shall assure that the rates comply with the requirements of 47 U.S.C. § 543 of the Cable Television Consumer and Competition Act of 1992 as amended (the "Cable Act"). 47 C.F.R. § 76.922(a). The Cable Division may accept as in compliance with the statute 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 comply with the 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) ¶ 129; see also 47 C.F.R. § 76.937(a). 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)(ii)(A); 47 C.F.R. § 76.922(e)(iii)(A). Although cable operators may project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(ii)(A). With respect to equipment and installation costs on FCC Form 1205, subscriber charges shall not

exceed charges based on actual costs as determined in accordance with regulatory requirements. 47 C.F.R. § 76.923(a)(2). Accordingly, the Cable Division must determine that upon a showing by Charter, the rates are in compliance with the Cable Act and 47 C.F.R. §§ 76.922 and 76.923.

III. DISCUSSION AND ANALYSIS

Generally, the Cable Division finds that Charter's FCC Form 1205s and FCC Form 1240s comply with the applicable federal law. However, three issues with respect to Charter's FCC forms are addressed herein. Specifically, we address the Company's treatment of federal deferred taxes on its FCC Form 1205s, which affects all communities; the inclusion of the FCC regulatory fee on the FCC Form 1240 filed for the Town of Boylston; and the treatment of interest on true-up on Charter's FCC Form 1240s filed for the Towns of Dudley, Leicester, Millbury, Southbridge, Spencer and West Brookfield.

A. FCC Form 1205: Federal Deferred Taxes

On Charter's two FCC Form 1205s, the Company calculated federal deferred taxes by subtracting the state tax rate from the federal tax rate (Exh. Charter-1; Exh. Charter-3; RR-CATV-2). However, the Instructions to FCC Form 1205 provide the following directions for computing the net total income tax rate: "[a]dd line G1 [federal income tax rate] to line G2 [state income tax rate]. From that sum, subtract the product of lines G1 and G2. This latter calculation is included since state income taxes are deductible from federal income taxes...." Form 1205 Instructions (June 1996), at 8, Line G3. Therefore, we find Charter's treatment of deferred taxes inappropriate. In response to the Cable Division's Record Request 4, Charter refiled the back-up information for its Western Massachusetts FCC Form 1205, adjusted to comply with the FCC's directions (RR-CATV-4). We find that this back-up information supports a reasonable calculation of federal deferred taxes, but we also find that a refiling by Charter of its FCC Form 1205s is necessary, because the adjustments to the deferred taxes may result in minor changes to the rates reported on the forms. Accordingly, the Cable Division directs Charter to refile its FCC Form 1205s for both its Central Massachusetts and Western Massachusetts systems, as adjusted to comply with the FCC's directions for the deferred tax calculation.

B. FCC Form 1240: The FCC Regulatory Fee

In the Town of Boylston, Charter prepared an FCC Form 1240 that included the \$0.04 FCC regulatory fee as an external cost at Worksheet 7, Projected Period, Line 708 (Exh. Charter-2). However, Charter charges subscribers the FCC regulatory fee separately on the monthly statements for all of its communities. At the public hearing, Charter's representative stated that the inclusion of the FCC regulatory fee on the FCC Form 1240 was a clerical error. To ensure that subscribers will not be charged twice for the same fee, the Cable Division directs Charter to refile the FCC Form 1240 for Boylston with this fee removed. The Cable Division also directs that Charter refund to Boylston

subscribers any overcharges associated with the double-billing of the FCC regulatory fee after Charter's current BST rates became effective on March 1, 1999.

C. FCC Form 1240: Interest on True-Up in Dudley, Leicester, Millbury, Southbridge, Spencer and West Brookfield

On the FCC Form 1240s the Company filed for its 26 regulated communities on November 29, 1998, it reported identical rates on Line I9, "Maximum Permitted Rate For Projected Period," and Line I10, "Operator Selected Rate For Projected Period" (Exhs. Charter-1 to -26). The Company thereafter filed rate information with the Cable Division, reporting the newly-implemented actual BST rates charged in each community (Exhs. CATV-1 and -2). In comparing this rate information with the FCC Form 1240s, the actual BST rate charged subscribers is the same as both the maximum permitted rate ("MPR") and the operator selected rate in 14 communities.⁷ However, in 12 Central Massachusetts communities, the BST rate Charter actually charged subscribers is lower than both the operator selected rate and the MPR as shown on the FCC Form 1240 (Exh. CATV-1; Exhs. Charter-1, -4, -7, -10, -12, -13, -14, -19, -20, -23, -24 and -26). Further, in six of these communities,⁸ Charter reported a positive amount of total true-up on Line H13, "Total True-Up Adjustment" (Exhs. Charter-4, -10, -12, -19, -20 and -24).⁹ On these six communities' forms, the Company claimed the entire Line H13 true-up adjustment on Line H14, "Amount of True-Up Being Claimed This Projected Rate Period." Charter included this true-up in the MPR calculated on Line I9, despite the lower BST rates the operator was actually charging subscribers in these six communities. (id.).¹⁰

⁷ These communities are Boylston, Chicopee, East Longmeadow, Easthampton, Hampden, Holden, Ludlow, Oxford, Paxton, Southampton, Southborough, Sturbridge, Westborough and Wilbraham (Exh. Charter- 2, -3, -5, -6, -8, -9, -11, -15, -16, -17, -18, -21, -22 and -25; Exh CATV-1 and -2).

⁸ These communities are Dudley, Leicester, Millbury, Southbridge, Spencer and West Brookfield.

⁹ In the other six communities, Auburn, Grafton, Northborough, Northbridge, West Boylston and Worcester, the "Total True-Up Adjustment" on Line H13 is a negative amount, because the Company collected excess revenue from its rates. (Exhs. Charter -1, -7, -13, -14, -23 and -26). In compliance with the FCC Form 1240 Instructions and the rate regulations, Charter claimed all of this negative true-up in the current Projected Period on Line I8, "True-Up Segment for Projected Period," on these communities' FCC Form 1240s (id.). See FCC Form 1240, Instructions (July 1996) at 21, Line H14; 47 C.F.R. § 76.922(e)(3)(ii).

¹⁰ The FCC Form 1240 includes the true-up from Line H14 on Line I9 through the following steps. First, Line I8, "True-Up Segment for Projected Period," is computed by dividing Line H14 by both (i) the estimated number of subscribers during the projected period and (ii) by 12

During cross-examination, the Company's witness, Ms. Denise M. Jones, testified that the Company's proposed true-up calculation benefits subscribers because the operator selected rate is less than the MPR (Audiotape at counter nos. 374-379). Charter also claimed that it followed the FCC Form 1240 Instructions, in noting that "if Line H13 is greater than 0, the amount passed through is left to the cable operators [sic] discretion" (RR-CATV-3). When requested to provide support for the proposed calculation, Charter merely stated that it "elects to pass through the entire true-up adjustment in the projected period in order to determine the maximum allowable rate as defined on Line H14 of the FCC Form 1240 instructions" (RR CATV-5).

As stated above, the FCC Form 1240 allows a cable operator to annually update its BST rates to account for inflation, changes in external costs, and changes in the number of regulated channels. A portion of the FCC Form 1240 computation is based upon projected costs. If a cable operator has underestimated its projected costs, it may "true-up" its projection to correct for the difference between its actual and projected costs. The issue is whether Charter calculated and reported the true-up amount in compliance with applicable law.

FCC Form 1240, Module H, computes true-up and the interest on true-up. FCC Form 1240, Instructions (July 1996) at 19-21. The cable operator begins by computing two versions of its true-up period revenue. First, it computes this revenue using the BST rates it actually charged, reported on Line H1, "Revenue From Period 1."¹¹ *Id.* at 19. The operator then computes what its revenue would have been if it had charged its BST MPR, reported on Line H2, "Revenue From Maximum Permitted Rate for Period 1." *Id.* at 20. Line H1 is then subtracted from Line H2 to derive Line H3, "True-Up Period 1 Adjustment," which is the amount the operator's actual revenue either exceeded or fell short of its maximum possible revenue. *Id.* The FCC allows interest to be accrued on the Line H3 true-up at 11.25 percent, for the period between the beginning of True-Up Period 1 and the end of the most recent Projected Period shown on the previous FCC Form 1240, reported on Line H4, "Interest on Period 1 Adjustment." *Id.* Lines H3 and H4 are added together on Line H13, "Total True-Up Adjustment." Line H13 is then divided into Line H14, the "Amount of

to convert an annual figure to a monthly figure. FCC Form 1240, Instructions (July 1996) at 22-23. Line I8 is then added together with Lines I4 through I7 to compute Line I9. See FCC Form 1240 at 4.

¹¹ FCC Form 1240 requires a cable operator to have more than one true-up period if the true-up will be performed over more than 12 months, hence the reference to "Period 1." The Company's FCC Form 1240 true-up covers only 12 months, between October 1, 1997 and September 30, 1998, so it completed only the True-Up Period 1 portion of Module H, Lines H1 through H4.

True-Up Being Claimed This Projected Rate Period,” and Line H15, “Remaining True-Up Adjustment.”

As mentioned above, in six communities’ FCC Form 1240s, Charter claimed Line H13’s entire true-up on Line H14, and included it within the MPR, while at the same time charging subscribers a lower actual BST rate. Consequently, on the next annual FCC Form 1240 the Company files, the true-up computation would incorporate the true-up included in this year’s MPR into Line H2,¹² whereas Line H1 would incorporate this year’s lower actual BST rate, excluding much of this true-up.¹³ Some or all of this year’s excess true-up would appear on the next annual Line H3 and accrue interest for a second time on Line H4. Indeed, the next annual Line H4 would accrue interest on this year’s interest.

The FCC addressed interest on true-up in its rate regulations at 47 C.F.R. § 76.922(e)(3)(iii):

If an operator has underestimated its cost changes and elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment, but the operator will not lose its ability to recover such costs and interest.

The FCC explained the rationale for this rule in its Thirteenth Order on Reconsideration, MM Docket No. 92-266, FCC 95-397, 11 FCC Rcd. 388 (released September 22, 1995) (“Thirteenth Order”). The FCC stated that operators would be able to recover excess accrued costs with interest to the extent that the projected costs did not cover the increases that actually took place. Id. at 422, ¶ 80. On the operator’s next filing, the operator would be entitled to recover the excess costs plus interest between the date the costs are incurred and the date the operator is entitled to make its next annual rate adjustment. Id. The FCC reasoned that this rule gives

¹² Line H2 is computed by multiplying together three numbers, including Line F9, “Maximum Permitted Rate for True-Up Period 1.” FCC Form 1240, Instructions (July 1996) at 20. Line F9 in turn is derived by adding together five numbers, including Line F8, “True-Up Segment for True-Up Period 1.” Id. at 18. Line F8 is computed by dividing Line H14 from the previous FCC Form 1240 by the estimated number of subscribers during the true-up period and the number of months in the true-up period. Id. at 18.

¹³ The Instructions direct cable operators to report the “average rate you elected to charge.” FCC Form 1240, Instructions (July 1996) at 19. In the previous rate period, when the Company charged actual rates to subscribers that were less than its MPRs, it properly used its actual rates to compute Line H1. See, e.g., Exh. Charter-4, Line A1 and Worksheet 8.

operators the flexibility to delay rate increases without losing the opportunity to recover interest on costs that accrued due to circumstances beyond their control, while ensuring that where an operator makes a business decision to delay a rate increase, subscribers are not required to pay for the cost of the delay. Id.

The FCC adopted the FCC Form 1240 to ensure an operator's compliance with this rule. First, the FCC Form 1240 Instructions state that "the accrual of interest is cut off at the end of the most recent Projected Period (except for first time filers of Form 1240.) For example, if, on your most recent Form 1240, you defined the Projected Period as running from January 1 to December 31, your next true-up has the accrual of interest stopping at the end of December 31." FCC Form 1240, Instructions (July 1996) at 5.¹⁴

Second, the FCC designed Module H of the FCC Form 1240 to prevent operators from accruing interest on the same true-up on two successive FCC Form 1240s. Line H13 computes the "Total True-Up Adjustment." However, not all of this true-up adjustment is required to be reported on Line H14, "Amount of True-Up Being Claimed This Projected Rate Period," in all instances. The Instructions to Line H14 begin: "[e]nter the amount of the True-Up Adjustment being passed through to your subscribers during the Projected Period." (Emphasis added.) Id. at 21. Therefore, only true-up amounts that will be included in subscribers' rates at the outset of the Projected Period may be properly carried over to Line H14. The FCC provided Line H15, "Remaining True-Up Adjustment," so the cable operator could report the excess true-up it would not pass through during the Projected Period, but could elect to recover in future years. Id. The FCC Form 1240 Instructions direct that on the next annual FCC Form 1240, Line H15 shall be reported as Line H12, "Previous Remaining True-Up Adjustment." Id. at 21. The form indicates that Line H12 be added directly into the total true-up adjustment on Line H13, without any interest being accrued upon it. Id. In addition, on the next annual form, the BST rates used to compute true-up on Lines H1 and H2 shall contain the same amount of previous true-

¹⁴ See also the FCC's Cable Letter, Richard D. Treich, DA 97-1518, CSB-ILR 97-6 (released July 18, 1997).

up.¹⁵ Id. at 19-20. Thus, none of this true-up is to be included on Line H3 and none of it is to accrue interest on Line H4.

We find that the Company's proposal to claim its entire true-up on Line H14 without passing it completely through in subscribers' rates does not comply with the Instructions to FCC Form 1240, and will result in the Company's improper accrual of interest on this true-up over a second Projected Period. The "discretion" in the Instructions to Line H14 referred to by Charter merely gives cable operators the discretion of not passing on to subscribers the entire true-up during the Projected Period; it does not imply that true-up can be "claimed" and included in the MPR but not "passed through to ... subscribers."¹⁶ Id. Moreover, we determine that Charter's calculation of true-up is not in the subscribers' interest, as the Company contended, because the subscribers would be required to pay two years' interest on the same true-up, as well as interest on interest.

In the six communities with a positive amount of true-up that is not being entirely passed through to subscribers, the Company should remove the excessive true-up from Line H14, and record it on Line H15, "Remaining True-Up Adjustment." This adjustment will reduce these communities' MPRs, but will have no effect on the Company's revenues during the Projected Period, because the Company chose not to charge its initial MPRs. We note that under the FCC's regulations, the Company is legally prohibited from raising its rates later in the Projected Period. 47 C.F.R. § 76.922(e)(1). Nevertheless, the Company is not prejudiced by this adjustment, because the unused true-up, now on Line H15, will be available on its next filing, and could be passed on to subscribers during the next Projected Period. This process "ensures that where an operator makes a business decision to delay a rate increase,

¹⁵ Line H1 and H2 contain the same amount of true-up for two reasons. First, on this year's FCC Form 1240, the Line H14 true-up would have been carried over to Line I8 and been incorporated into both the MPR on Line I9, and the operator selected rate on Line I10. Because only true-up actually charged to subscribers on Line I10 appears on Line I9, the true-up on both lines is identical. Second, Lines H1 and H2 are both calculated by multiplying together three numbers. Two of them – the number of subscribers and the number of months in the true-up period – are the same for both lines; only the third number is different; the rates charged during the true-up period.

¹⁶ The Company's witness, Ms. Jones, testified at the hearing that the only way to establish the maximum allowable rate was to "take 100 percent of that true-up in the current year, so that we reserve that..." (Audiotape at counter nos. 342-350). In actual practice, the Company should be able to first compute its FCC Form 1240s by including all the available true-up on Lines H14 and I9 to determine its maximum allowable rate, but then, if a lower actual rate is chosen for Line I10, adjusting Lines H14 and I9 to remove any excess true-up. There is no need to "reserve" excess true-up on Line H14, because it will be preserved for the following year on Line H15.

subscribers are not required to pay for the cost of the delay.” Thirteenth Order at 422, ¶ 80.

The Cable Division concludes that Charter’s FCC Form 1240s for the Towns of Dudley, Leicester, Millbury, Southbridge, Spencer and West Brookfield are not in compliance with the applicable statutes and regulations and are therefore unreasonable as filed. The Company is therefore directed to file amended FCC Form 1240 filings for these communities, to remove true-up which is claimed but not passed through to subscribers from Line H14, and report this true-up on Line H15. Lines I8 and I9 must also be changed to conform with Line H14, as amended. The Cable Division also directs Charter to amend Line I10 on its refiled FCC Form 1240s, to show the actual BST rate being charged to subscribers.

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 November 29, 1998 for Auburn, Chicopee, East Longmeadow, Easthampton, Grafton, Hampden, Holden, Ludlow, Northborough, Northbridge, Oxford, Paxton, Southborough, Southampton, Sturbridge, West Boylston, Westborough, Wilbraham and Worcester.

The Cable Division hereby directs Charter to refile its FCC Form 1240s for Boylston, Dudley, Leicester, Millbury, Southbridge, Spencer and West Brookfield on or before December 6, 1999, in compliance with this Rate Order.

The Cable Division hereby directs Charter to refile its FCC Form 1205s for its Central Massachusetts and Western Massachusetts systems on or before December 6, 1999, in compliance with this Rate Order.

The Cable Division directs Charter to file a refund plan on or before December 6, 1999 for BST overpayments in the Town of Boylston, in compliance with this Rate Order.

The attached schedule provides the current and approved maximum permitted basic service tier programming and equipment rates for each community.

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

s/ Alicia C. Matthews

Alicia C. Matthews
Director

APPEALS

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 1997, c. 164, § 273. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within seven days of the filing of the initial petition for appeal.