



THE COMMONWEALTH OF MASSACHUSETTS

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

**RATE ORDER**

CTV 05-5/06-2

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, DBT, d/b/a Charter Communications-Massachusetts.

---

**APPEARANCES:**

Susan W. Westfall  
Vice President and Counsel  
East Division Operations  
Charter Communications  
331 Riverview Drive  
Chatham, MA 02633  
For: CHARTER COMMUNICATIONS  
ENTERTAINMENT I, DBT  
Petitioner

Robert Datz  
Chairman, Cable Advisory Committee  
Town of Brimfield  
103 Paige Hill Road  
Brimfield, MA 01010  
For: THE TOWN OF BRIMFIELD  
Intervenor

Barry M. Brenner  
Town Administrator  
Kathy Dalglish  
Cable TV Access Director  
63 Main Street  
Northborough, MA 01532  
For: THE TOWN OF NORTHBOROUGH  
Intervenor

William August, Esq.  
Epstein & August, LLP  
101 Arch Street, Suite 900  
Boston, MA 02110  
For: THE TOWN OF WILBRAHAM  
Intervenor

## I. INTRODUCTION

On November 2, 2005, Charter Communications Entertainment I, DBT, d/b/a Charter Communications-Massachusetts (“Charter” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Forms 1240 for 27 of its regulated communities. The Company also filed a nationwide FCC Form 1205 with proposed equipment and installation rates for the 12-month fiscal year ending on December 31, 2004, for all 47 of its regulated Massachusetts communities.<sup>1</sup> The Cable Division docketed this filing as CTV 05-5. Pursuant to FCC regulations, Charter’s proposed BST programming, equipment, and installation rates became effective on February 1, 2006. See 47 C.F.R. § 76.933(g).

On June 27, 2006, the Town of Brimfield (“Brimfield”) submitted to the Cable Division a formal request for rate regulation. Pursuant to this request, on July 17, 2006, Charter submitted to the Cable Division its initial FCC Forms 1240 and 1205 for Brimfield. The Cable Division docketed this filing as CTV 06-2. By Order dated July 19, 2006, the Cable Division consolidated the two filings as CTV 05-5/06-2.

The Cable Division held a public and evidentiary hearing on August 22, 2006. In this proceeding, the Towns of Brimfield, Northborough and Wilbraham intervened as parties. The evidentiary record consists of Charter’s rate forms admitted as Charter Exhibits 1 through 30,

---

<sup>1</sup> Charter did not file FCC Forms 1240 for 20 regulated communities whose BST rates were previously established under the FCC’s small system rules.

Charter's responses to information requests admitted as Cable Division Exhibits 1 through 11, and Charter's responses to record requests issued by the Cable Division.

## II. REVIEW OF FCC FORMS 1240

### A. 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 ("FRC") to the extent they are reasonably certain and reasonably quantifiable; however, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A).

The standard under which the Cable Division must review rate adjustments on the FCC Form 1240 is found in the FCC's rate regulations. Specifically, 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(a). 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 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, at 5716, ¶ 128 (1993) (“Rate Order”); see also 47 C.F.R. § 76.937(a).

B. Discussion and Analysis

1. The Rate Filings for Brimfield

Under federal regulations, a cable operator that becomes subject to rate regulation in a community files an initial FCC Form 1200 with the local franchising authority.

47 C.F.R. § 76.922(b)(6). The FCC Form 1200 allows the cable operator to justify the reasonableness of its initial BST rate. Id. Once the cable operator files the initial FCC Form 1200, the operator may file an FCC Form 1210 on a quarterly basis or an FCC Form 1240 on an annual basis to justify changes to the initial BST rate.

See 47 C.F.R. § 76.922. However, for Brimfield, Charter filed only an FCC Form 1240, claiming it should be excused from this requirement (Exh. Charter-29, cover letter). Charter argued that since it had acquired the Brimfield franchise in 1995, and that neither its previous owner nor Charter prepared a complete set of filings for their unregulated communities, it would

be administratively burdensome to recreate the filings now (id.; Tr. at 19-20). Charter also argued that its starting rate on its FCC Form 1240, the current BST rate of \$13.01, is reasonable because it has not changed in many years (Tr. at 17-20; see Exh. Charter-29, at 4, Line I10).<sup>2</sup>

The Cable Division has acknowledged that determining an initial regulated BST rate can be a difficult process, particularly given the consolidation of the cable industry that has occurred since rate regulation began. Charter Communications Entertainment I, L.L.C., CHA Y-00 (Phase I), at 5 (2000); Comcast Cable Communications, Inc., CTV 04-3/04-4, at 28 (2005). A cable operator is nonetheless required to justify its proposed BST maximum permitted rate (“MPR”). While we have excused the filing of an FCC Form 1200 in the past, we have done so only where there was some other independent verification of reasonableness. See e.g. CTV 04-3/04-4, at 28-30.

Here, Charter’s inability to recreate the appropriate rate filings is no less difficult. Before the Brimfield franchise was transferred to Charter in 1995, the Town was served by United Video Cablevision, Inc. (“United Video”). See Charter Communications Entertainment I, L.P., Y-94 COS, Y-95 EQU, Y-95 SMA, at 4-5 (1996). The Cable Division’s most recent rate proceeding for the former United Video communities took place in 1996, when we reviewed

---

<sup>2</sup> The Cable Division’s records reflect that this rate has been in effect since March 1999. Pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h), the Cable Division hereby takes administrative notice of Charter’s rate change notice dated February 1999, wherein Charter informed its Brimfield subscribers in February 1999 that it was increasing the BST rate from \$11.95 to \$13.01, beginning with the March 1999 monthly statement.

Charter's FCC Forms 1230 prepared according to the FCC's small system rules.<sup>3</sup> Id. Charter filed separate FCC Forms 1230 for each headend, but it filed no form that included Brimfield data. Id. At that time, Brimfield and the Town of Wales were served jointly by a separate headend, and neither community had requested rate regulation.<sup>4</sup> Id. Thus, there are no previous rate forms incorporating historical data for Brimfield to which Charter could refer when preparing its Brimfield forms. Not only were no rate forms ever prepared for the Brimfield headend, no rate forms have been prepared since 1996 for any other former United Video communities. Because of the change in the ownership of the Brimfield franchise in 1995, and the lack of rate activity in the former United Video communities, Charter would face exceptional difficulties in preparing FCC Forms 1200 and 1210 for Brimfield.

To excuse the initial FCC Form 1200 filing in this case would not only relieve the Company of the administrative burden of recreating the form, it would also benefit subscribers. All of the BST MPRs the Cable Division approved in 1996 for the former United Video communities exceeded the BST rates that were then currently in effect. Y-94 COS, Y-95 EQU, Y-95 SMA, at Rate Schedule. Since its acquisition of the franchises, Charter has never filed for

---

<sup>3</sup> Under the FCC's rules, United Video qualified as a small cable company and its regulated franchises qualified as small cable systems, a status that Charter inherited. Charter Communications Entertainment I, L.P., Y-94 COS, Y-95 EQU, Y-95 SMA, at 4-5 (1996). In that proceeding, Charter updated small system rate forms originally filed by United Video. Id. at 5.

<sup>4</sup> The Brimfield system has now been interconnected with the Chicopee headend (Tr. at 23). Charter cannot assert small system status for Brimfield in this proceeding, because the FCC has specifically ruled that the Chicopee headend is not a small system. Greater Chicopee Cablevision, Inc., 11 FCC Rcd 21117, DA 96-2024 (1996)).

a BST MPR rate increase, and has never even sought to adjust the BST MPR for inflation.<sup>5</sup> These initial BST MPRs still exceed the \$13.01 rate currently being charged in all of these communities.<sup>6</sup> Were the Cable Division to require Charter to prepare forms for Brimfield at this time, the submissions would include not only Brimfield's initial rate but also many years' worth of inflation adjustments. Given that Charter has not decreased the total number of channels carried on Brimfield's BST during this time period,<sup>7</sup> the BST MPR, if recalculated, would certainly exceed the \$13.01 rate that Charter has been charging since 1999. Therefore, we conclude that the FCC Form 1240 is a valid means of establishing the initial BST MPR in Brimfield.

However, Charter's FCC Form 1240 raises two issues. First, on the form, Charter proposed a BST MPR of \$13.41, even though the Company was actually charging \$13.01 in Brimfield (Exh. Charter-29, at 4). This would result in Charter having positive true-up on its next Brimfield filing, prior to any comparison of actual and historical cost data from the current

---

<sup>5</sup> Small systems are permitted to adjust their FCC Form 1230 small system rates by filing an FCC Form 1210 to reflect inflation. 47 C.F.R. § 76.934(h)(8)(i).

<sup>6</sup> See Monthly Rates for Pepperell, Harvard, Groton and Dunstable; Monthly Rates for Uxbridge, Sutton, Millville, Douglas, Rutland, Barre, Hubbardston, Oakham and Berlin, and Monthly Rates for Westport, all filed with the Cable Division on January 9, 2006. Charter is required to file a copy of these rate change notices with the Cable Division pursuant to 207 C.M.R. § 10.02(2). On all of these notices, the monthly rate of \$13.01 for the BST was unchanged. The Cable Division hereby takes administrative notice of these notices pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).

<sup>7</sup> Charter later submitted a revised FCC Form 1240 for Brimfield, reflecting an increase in the number of BST channels from 22 to 24 (Exh. CTV-11).



filing. (Tr. at 19; see CTV 04-3/04-4, at 29-30).<sup>8</sup> Charter agreed to amend its FCC Form 1240 so that it would calculate a BST MPR of \$13.01 equal to Brimfield's actual BST rate. (Tr. at 23-24). Charter submitted a revised FCC Form 1240 for Brimfield that reflects a BST MPR of \$13.01 for the Town (RR-CTV-4).

The second issue with the Brimfield FCC Form 1240 concerns the starting date for the projected period. Charter began the projected period on February 1, 2006 (Exh. Charter-29, at 1). This precedes not only July 17, 2006, when the FCC Form 1240 was first filed, but also June 27, 2006, the date that Brimfield requested regulation. Because the FCC's rules require that rate forms be submitted at least 90 days prior to the beginning of the projected period, the form's projected period should start no earlier than October 15, 2006. 47 C.F.R. § 76.933(g).

Charter explained that it used an earlier starting date for Brimfield's projected period, in order to bring Brimfield's annual rate filing date into line with the filing date for all of its other Massachusetts communities (Tr. at 25). The FCC regulation's filing requirement is intended to provide the local franchising authority with sufficient time to review the rate filing before the proposed BST rate goes into effect. 47 C.F.R. § 76.933(g); see Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, MM Docket No. 92-266, FCC 95-397, 11 FCC Rcd 388, at 425-427, ¶¶ 92-93 (1995). In this case, because Charter has not proposed a change to its

---

<sup>8</sup> Charter would report true-up on its next Brimfield FCC Form 1240, because on Module H, "True-Up Adjustment Calculation," the amount of Line H1, "Revenue from Period 1," calculated using the actual BST rate of \$13.01, would be less than the amount on Line H2, "Revenue From Maximum Permitted Rate for Period 1," calculated using the BST MPR of \$13.41.

monthly BST rate of \$13.01, which has been in effect since 1999, notice of a rate change is not an issue (RR-CTV-4, at FCC Form 1240, at 4, Line I10). In addition, the earlier start to the projected period has the effect of extending the time period included on Brimfield's FCC Form 1240, thus increasing the Company's potential refund exposure. Further, in the interest of administrative efficiency, the Cable Division has long encouraged the consolidation of rate filings in a single proceeding. Accordingly, for these reasons, the Cable Division approves Charter's use of a projected period commencing on February 1, 2006 for its Brimfield filing. The Cable Division accepts Charter's amended FCC Form 1240 establishing a BST MPR of \$13.01, with a projected period beginning on February 1, 2006, submitted in response to the Cable Division's Record Request 4.

## 2. The Rate Filings for West Brookfield

On West Brookfield's FCC Form 1240, Charter indicated that it was charging an operator selected rate ("OSR") of \$16.61, equal to its proposed BST MPR (Exh. Charter-24, at 4, Lines I9 and I10). Included in this rate were FRCs of \$0.49 (id. at Additional Information & Attachments). However, on West Brookfield's rate change notice, Charter listed a BST rate of \$16.84 and separate FRCs of \$0.49, resulting in a combined rate of \$17.33. Monthly Rates for West Brookfield, Effective February 2006.<sup>9</sup> According to Charter, the reason for the discrepancy was "a mis-communication between the field and the regulatory department" concerning the OSR on the original rate filing (Exh. CTV-10). In response to a Cable Division

---

<sup>9</sup> Pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h), the Cable Division hereby takes administrative notice of this Charter's rate change notice for West Brookfield dated January 9, 2006.

inquiry, the Company submitted a revised FCC Form 1240 which reported a BST MPR of \$16.84 inclusive of the \$0.49 in FRCs (id. at Additional Information & Attachments).

The Instructions for FCC Form 1240 direct a cable operator to enter, as the OSR on Line I10, “the rate you are electing to charge during in the Projected Period.”

Instructions for FCC Form 1240, at 23. Although Charter reports the BST and the FRCs separately on the West Brookfield rate card, FRCs are an element of the FCC Form 1240’s BST MPR and OSR, and the rate form must reflect these costs as such. The FRCs are included on the West Brookfield FCC Form 1240, at Worksheet 7 - External Costs, and thus carried forward into the calculation of the BST MPR calculation (Exh. Charter-24, at 4, Line I7, and at Worksheet 7).<sup>10</sup> Therefore, the BST MPR and OSR shown in Module I of Brimfield’s FCC Form 1240 should include both the BST rate and the FRCs. Since Charter’s remaining accumulated true-up in West Brookfield allows the Company to justify a BST MPR of \$17.33, we determine the rate is consistent with applicable law and reasonable (see id., at 4, Line H15). The Cable Division directs Charter to refile the FCC Form 1240 for West Brookfield showing, on Lines I9 and I10, a BST MPR and an OSR of \$17.33. The Cable Division notes that this refiling will have no adverse rate impact for West Brookfield subscribers, as the Cable Division is approving the actual rates in effect since February 2006.

---

<sup>10</sup> The Worksheet 7 for the Projected Period reports annual FRCs of \$7,168.15 (Exh. Charter-24, at Worksheet 7 - Projected Period, Line 707). When divided by 12 to convert the annual figure into a monthly one, and when divided by the projected number of West Brookfield subscribers, 1,230; the result is \$0.49, the same amount that Charter lists for its FRCs on its West Brookfield rate card (see id. at 2).

### 3. Broadcast Channels Carried in Brimfield

Brimfield expressed concern that some Boston broadcast channels have been removed from Charter's Brimfield channel lineup (Tr. at 28-30). Charter explained that because Brimfield is in the Springfield designated market area ("DMA"), some Springfield channels have asserted network non-duplication rights and required Charter to remove Boston channels from the Brimfield system (*id.* at 31-34). The Company further explained that broadcast channel carriage is based on either a retransmission consent agreement or whether another station has invoked network non-duplication rights, and is not within the Company's sole discretion (*id.* at 36).

The question of the carriage of broadcast channels on cable television systems is solely a matter of federal law. Communications Act of 1934, as amended, Section 614; 47 U.S.C. § 534; 47 C.F.R. §§ 76.55-76.65; Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, 8 FCC Rcd 2965, FCC 93-144 (1993). The Cable Division therefore has no legal authority to direct a cable operator to carry non-local broadcast signals. The FCC has specified that broadcast stations are permitted to assert mandatory carriage rights on cable systems located within the station's market. Rancho Palos Verdes Broadcasting Inc. v. Rapid Communications, L.L.C., DA 06-1374, at 1 (July 3, 2006). Under the FCC's regulations, a station's market for this purpose is its DMA, which is determined by Nielsen Media Research. *Id.*, *see* 47 C.F.R. § 76.55(e)(2). Any change in the

current rules applicable to the carriage of distant broadcast signals on cable systems would require Congressional action.<sup>11</sup>

#### 4. Conclusion

Based on our review of Charter's FCC Forms 1240, as well as the Company's responses to inquiries, the Cable Division determines that Charter has prepared its forms for all other regulated communities in compliance with federal laws and regulations. Accordingly, we conclude that the BST MPRs that the Company established on the FCC Forms 1240 initially filed for these communities are reasonable and in compliance with applicable law. We further conclude that the BST MPR established by the Brimfield FCC Form 1240 submitted as Cable Division Record Request 4 is reasonable and in compliance with applicable law. Charter is required to submit an FCC Form 1240 for West Brookfield, completed in compliance with this Order.

### III. REVIEW OF FCC FORMS 1205

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. Instructions for 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

---

<sup>11</sup> Brimfield asserted that Comcast carries, in its neighboring cable system in the Springfield DMA, certain Boston broadcast channels that are no longer available in Brimfield (Tr. at 36-37). Because distant broadcast channel carriage issues are not within our jurisdiction, we are not familiar with the agreements or technologies that permit Comcast to carry these channels, nor are we familiar with the issues that may prevent Charter from carrying them.

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). As with the FCC Form 1240, the burden of proof is on the cable operator to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; Rate Order at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

Charter filed its FCC Form 1205 prior to the Cable Division's order in Charter Communications Entertainment I, L.L.C., d/b/a Charter Communications Massachusetts, CTV 04-6, at 10-11 (2005). During that proceeding, Charter agreed to remove from its FCC Form 1205 filings, all commission expenses associated with the maintenance and installation of customer premises equipment. CTV 04-6, at 5. Because these commission expenses had not been removed from the November 29, 2005, filing, Charter submitted a revised FCC Form 1205 with these expenses removed (Exh. CTV-4). This revised FCC Form is also applicable to Brimfield (Exh. Charter-30, compare Exh. CTV-4). Based on our review of Charter's revised FCC Form 1205, we find that the FCC Form 1205 submitted by Charter as Cable Division Exhibit 4 establishes rates for equipment and installations that are reasonable and in compliance with applicable law.

#### 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 November 2, 2005, establishing basic service tier programming

rates for Auburn, Boylston, Chicopee, Dudley, East Longmeadow, Easthampton, Hampden, Grafton, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southampton, Southborough, Southbridge, Spencer, Sturbridge, Upton, West Boylston, Westborough, Wilbraham, and Worcester.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Charter's FCC Form 1240, filed on November 2, 2005, for West Brookfield. The Cable Division hereby directs Charter to submit an FCC Form 1240 for West Brookfield completed in compliance with this Order, on or before October 26, 2006.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects Charter's FCC Form 1240 for Brimfield, filed on July 17, 2006. Upon due consideration, the Cable Division finds as just and reasonable the basic service tier programming rates established on the Charter FCC Form 1240 for Brimfield, that was submitted on August 31, 2006, in response to Cable Division Record Request 4.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts Charter's FCC Form 1205, as submitted on May 16, 2006, and admitted into evidence as Cable Division Exhibit 4, establishing equipment and installation rates for Auburn, Barre, Belchertown, Berlin, Boylston, Brimfield, 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.

The attached schedule provides the approved basic service tier programming rates, and equipment and installation rates.

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

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

Issued: October 16, 2006



## Charter

### Rate Schedule

#### Basic Service Tier Programming and Equipment Rates

## Charter

### Rate Schedule

#### Basic Service Tier Programming and Equipment Rates

### **RIGHT OF APPEAL**

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.