

COMMONWEALTH OF MASSACHUSETTS
Department of Telecommunications and Energy
Cable Television Division

In the Matter of	)	Docket No. CTV 00-5
Adelphia Communications Corporation	)	Date Issued: March 12, 2001
)	
	)	Abington, CUID MA 0225
Adelphia Cablevision Associates, L.P.	)	Adams, CUID MA 0001
	)	Amesbury, CUID MA 0049
	)	Aquinnah, CUID MA 0275
Campbell	)	Bourne, CUID MA 0247
Communications, L.L.C.	)	Cheshire, CUID MA 0002
	)	Clarksburg, CUID MA 0003
Century Berkshire	)	Duxbury, CUID MA 0302
Cable Corp.	)	Edgartown, CUID MA 0273
	)	Essex, CUID MA 0153
Harron Cablevision	)	Falmouth, CUID MA 0072
of Cape Cod, Inc.	)	Gloucester, CUID MA 0136
	)	Great Barrington, CUID MA 0008
Harron Cablevision	)	Halifax, CUID MA 0229
of Massachusetts, Inc.	)	Kingston, CUID MA 0159
	)	Lee, CUID MA 0009
Martha's Vineyard	)	Lenox, CUID MA 0010
Cablevision, L.P.	)	Manchester-by-the-Sea, CUID MA 0154
	)	Marshfield, CUID MA 0191
Mountain Cable	)	Merrimac, CUID MA 0165
Company	)	North Adams, CUID MA 0004
	)	Oak Bluffs, CUID MA 0272
New England Cablevision	)	Pembroke, CUID MA 0228
of Massachusetts, Inc.	)	Plymouth, CUID MA 0123
	)	Plympton, CUID MA 0245
all d/b/a	)	Rockland, CUID MA 0224
Adelphia Communications Corporation	)	Rockport, CUID MA 0137
	)	Salisbury, CUID MA 0162
	)	Sandwich, CUID MA 0246
For a Determination)	Sheffield, CUID MA 0346
of Cable Television Rates)	Stockbridge, CUID MA 0011
)	

RATE ORDER

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AND

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Intervenors

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FOR: THE TOWNS OF LEE, LENOX, SHEFFIELD AND
STOCKBRIDGE
Intervenors

AND

THE TOWN OF GREAT BARRINGTON
Limited Participant

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FOR: THE TOWN OF AQUINNAH
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I. INTRODUCTION

On August 18, 2000, Adelphia Cable Communications (“Adelphia” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy proposed equipment and installation rates on FCC Form 1205 for the above-captioned communities. Adelphia has not changed any of its equipment or installation rates as a result of this filing (Hearing Audiotape, Side 1, at counter nos. 162-165).

The Cable Division held a public hearing on Adelphia’s pending filing in Boston on December 5, 2000. The City of North Adams and the Towns of Amesbury, Bourne, Lee, Lenox, Pembroke, Sheffield and Stockbridge intervened in this proceeding, and the Towns of Aquinnah and Great Barrington appeared as Limited Participants. The evidentiary record includes three Adelphia exhibits and Adelphia’s response to one record request posed by the Cable Division. No briefs were filed by 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 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 equipment and installations 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) at 5727, ¶ 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 Cable Act. 47 C.F.R. §§ 76.922, 76.923, 76.930. The FCC Form 1205 allows a cable operator to annually adjust its costs for equipment and installations. Subscriber charges established by FCC Form 1205 shall not exceed charges based on actual costs as determined in accordance with regulatory requirements. 47 C.F.R. § 76.923(a)(2).

III. DISCUSSION AND ANALYSIS

On the FCC Form 1205, the Company proposed four monthly lease rates for converters, two monthly lease rates for remote controls, and a monthly additional outlet charge (Exh. Adelphia-1, at 5, 7). Adelphia provided documentation identifying the systems in which each rate was applicable, and the amount of the rate (Exhs. Adelphia-1, Adelphia-2). Adelphia reported that its proposed Converter 1 maximum permitted rate ("MPR") of \$3.65 per month was established for addressable converters in the original Adelphia communities,¹ as well as for digital converters in all those communities where digital service is available (*id.*; Exh. Adelphia-1, at 5). The Converter 2 MPR of \$1.95 per month was established for the addressable converters used in the Company's recently acquired Century,² FrontierVision³ and Harron communities⁴ (the "acquired communities") (Exh. Adelphia-1, at 5). The Converter 3 MPR of \$0.56 per month was established for Jerrold addressable converters in use on Martha's Vineyard (*id.*, Exh. Adelphia-1, at 7). The Converter 4 MPR of \$0.77 per month was established for non-addressable converters in the acquired communities (Exh. Adelphia-1, at 7). Adelphia's Remote 1 MPR of \$0.30 per month was established for remote controls in the original Adelphia communities, as well as digital remotes in all communities (*id.*). The Remote 2 MPR of \$0.14 per month was established for all remote controls, except digital remotes, in Adelphia's acquired communities (*id.*). The Company also established an MPR of \$0.87 for additional outlets (Exh. Adelphia-1, at 5, 7). Adelphia calculated each of these MPRs by averaging the costs of each category of equipment in service in the respective systems (Exh. Adelphia-2; Hearing Audiotape, Side 1, at counter no. 252).⁵

Adelphia requested that the Cable Division approve its methodology of averaging the costs of each category of equipment in service in its original Adelphia communities, while keeping the equipment in the acquired communities in separate cost categories (Hearing Audiotape, Side 1, at counter nos. 220-242). The Company proposed that for equipment in

¹ The original Adelphia communities are those that the Company served before its acquisitions in 1999. These are the communities of Adams, Aquinnah, Cheshire, Clarksburg, Duxbury, Edgartown, Falmouth, Kingston, Marshfield, North Adams, Oak Bluffs and Plymouth. The communities of Aquinnah, Edgartown and Oak Bluffs are on Martha's Vineyard.

² The Century communities are Great Barrington, Lee, Lenox, Sheffield and Stockbridge.

³ The FrontierVision communities are Amesbury, Merrimac and Salisbury in the Amesbury System; and Essex, Gloucester, Manchester-by-the-Sea, and Rockport in the Gloucester System.

⁴ The Harron communities are Abington, Bourne, Halifax, Pembroke, Plympton, Rockland and Sandwich.

⁵ Rather than charge subscribers the MPRs for equipment, Adelphia has proposed to continue charging the following lower current monthly rates: \$3.25 for Converter 1 in all communities, \$1.60 for Converter 2 in the Harron communities, \$1.93 for Converter 2 in the Amesbury system, \$0.61 for Converter 4 in the Century communities, and \$0.25 for Remote 1 in all communities. Adelphia is also proposing to continue its current monthly additional outlet charges: \$0.85 in its original Adelphia communities, \$0.28 in the Amesbury system, and \$0.23 in the Gloucester system.

the acquired communities that was in service on the date of acquisition, the rates would either remain unchanged or would decrease (*id.* at 474-487).

The Cable Act and the FCC's rate regulations permit Adelphia to aggregate its equipment costs to establish average charges. 47 U.S.C. § 623(a)(7)(A); 47 C.F.R. § 76.923(c)(1). The FCC's regulations state that a cable operator that uses average charges "must provide a general description of the averaging methodology employed...." 47 C.F.R. § 76.923(c)(1). The Cable Division finds that Adelphia has provided a satisfactory description of its averaging methodology.

The FCC regulations require the cable operator to provide "a justification that its averaging methodology produces reasonable equipment rates." *Id.* Moreover, equipment rates should be set at the same organizational level at which an operator aggregates its costs, and that categories of equipment should include "only equipment of the same type, regardless of the levels of functionality of the equipment within each such broad category." *Id.* We note that Adelphia has established four rates for converters and two rates for remote controls, rather than one rate for each type of equipment. If Adelphia included all of its converters in one category, it should have calculated an average MPR of \$2.46 (Exh. Adelphia-1, at 5, Step D, Lines 22 and 23). While this average rate would reduce the monthly rate for some subscribers with newer, more sophisticated, converters, the monthly converter rate would increase for many more Adelphia subscribers, who currently have older and less expensive converters (Exh. Adelphia-1, at 3, Schedule C). The reduction in the rate would result from including a significant number of lower cost converters, instead of reduced costs associated with the newer converters. Similarly, if Adelphia included all of its remote controls in one category, the resulting average MPR would be \$0.25 (Exh. Adelphia-1, at 5, Step C, Lines 14 and 15). This average rate is equal to the Company's current rate for remote controls in its original communities and for all digital remotes, but it would result in a monthly increase in remote control rates in Adelphia's acquired communities, whose subscribers use less sophisticated and thus less expensive remotes (Exh. Adelphia-1, at 3, Schedule C). Adelphia's averaging method results in rates more comparable with the actual costs of the equipment available to subscribers. The Cable Division therefore finds reasonable Adelphia's election not to fully consolidate its addressable converter and remote control rates at this time.⁶ Upon our review of Adelphia's submissions, we conclude that Adelphia has properly justified its average equipment rates. The Cable Division has also reviewed Adelphia's proposed hourly service charge and installation charges, and finds them to be reasonable. Accordingly, we find that the equipment and installation rates proposed by Adelphia are reasonable and in compliance with the law.

However, upon review of the exhibits, the Cable Division determines that the Company is charging more than the approved MPRs for certain equipment

⁶ The Cable Division anticipates that as Adelphia upgrades its equipment for all its subscribers, it will consolidate its converters and remote controls into fewer rate categories. We will review changes to the approved methodology at that time.

(Exh. Adelphia-1, at 7; Exh. Adelphia-2). For addressable converters, the Company is charging \$2.84 in the former Century communities and \$2.43 in the Gloucester system, instead of the Converter 2 MPR of \$1.95, approved herein (*id.*). On Martha's Vineyard, the Company is charging \$1.16 for its Jerrold addressable converters, instead of the Converter 3 MPR of \$0.56, approved herein (*id.*). For non-addressable converters, the Company is charging \$1.30 in the Amesbury system and \$1.35 in the Gloucester system, instead of the Converter 4 MPR of \$0.77, approved herein (*id.*). For non-digital remote controls, the Company is charging \$0.18 in the former Century communities and \$0.20 in the Amesbury and Gloucester systems, instead of the Remote 2 MPR of \$0.14, approved herein (*id.*). Adelphia has indicated that it has not changed any rates, pending our approval of its FCC Form 1205 (Hearing Audiotape, Side 1, at counter nos. 490-494). The Division determines that refund liability should begin on September 17, 2000, the date the rates first could have become effective pursuant to FCC regulations. 47 C.F.R. § 76.933(a). We direct Adelphia to adjust these rates accordingly and to refund all overcharges, with interest, back to September 17, 2000. We further direct Adelphia to submit a refund plan for its equipment rate overcharges within 10 days of this Rate Order.

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, Adelphia's FCC Form 1205 as filed on August 18, 2000 for Abington, Adams, Amesbury, Aquinnah, Bourne, Cheshire, Clarksburg, Duxbury, Edgartown, Essex, Falmouth, Gloucester, Great Barrington, Halifax, Kingston, Lee, Lenox, Manchester-by-the-Sea, Marshfield, Merrimac, North Adams, Oak Bluffs, Pembroke, Plymouth, Plympton, Rockland, Rockport, Salisbury, Sandwich, Sheffield and Stockbridge.

The Cable Division further orders Adelphia to adjust its selected converter and remote control rates in all communities not to exceed those rates established on the FCC Form 1205, and to file a refund plan for its equipment overcharges with the Cable Division within 10 days of the issuance of this Rate Order.

The attached schedule provides the current and maximum permitted equipment and installation 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 7 days of the filing of the initial petition for appeal.