



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

**RATE ORDER**

CTV 04-6

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, L.L.C., d/b/a Charter Communications-Massachusetts.

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## I. INTRODUCTION

On November 1, 2004, Charter Communications Entertainment I, L.L.C., 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 the communities it currently serves.<sup>1</sup> 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, 2003, for all 47 of its regulated Massachusetts communities. Pursuant to FCC regulations, Charter’s proposed BST programming, equipment, and installation rates for the current period became effective on February 1, 2005. See 47 C.F.R. § 76.933(g).

As part of our investigation of the Company’s filings, the Cable Division must conduct an evidentiary and public hearing. G.L. c. 166A, § 15. The Cable Division attempted to schedule this hearing in February, 2005, but Charter indicated that the timing was inopportune. With the Company’s agreement, the Cable Division then scheduled the hearing to be held on April 27, 2005, and issued an Order of Notice of the hearing pursuant to its regulations at 207 C.M.R. § 2.02(1). One week prior to the date of the hearing, the Cable Division learned that Charter had failed to provide the required public notice, and we therefore were required to

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<sup>1</sup> Charter did not file FCC Forms 1240 for the 20 regulated communities whose rates were previously calculated based on small system rules. In addition, the communities of Brimfield, Douglas, Dunstable, Millville, Wales, and Webster have not requested rate regulation.

postpone the hearing so that Charter could notice it properly. Charter then informed the Cable Division that due to scheduling problems with its expert witness, a hearing could not be held until the middle of July, at the earliest. The hearing was eventually held on August 10, 2005. These deferrals of the hearing prolonged the Cable Division's review of Charter's filing and, consequently, the issuance of our rate order. The Cable Division and Charter filed a Joint Motion for Waiver with the Media Bureau on June 14, 2005, seeking a waiver of the requirement, at 47 C.F.R. §76.933(g)(2), that the Cable Division issue its rate order within 12 months of the date on which Charter had filed for its rate adjustment, and requesting approval to delay the issuance of the order until December 15, 2005. The Media Bureau granted this request.

In this proceeding, the Towns of Grafton, Hadley, Southborough, Spencer, and Wilbraham, and the City of Worcester, intervened as parties. The evidentiary record consists of Charter's rate forms admitted as Charter Exhibits 1 through 28, Charter's responses to information requests admitted as Cable Division Exhibits 1 through 15, two exhibits presented by the Town of Southborough, and Charter's responses to record requests issued by the Cable Division and the Towns of Hadley, Southborough, and Spencer.

## II. REVIEW OF FCC FORMS 1240

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 (“FRCs”) 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).

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 prepared the forms in compliance with federal laws and regulations. Accordingly, we conclude that the BST maximum permitted rates (“MPR”) established by Charter’s FCC Forms 1240 are reasonable and in compliance with applicable law.

### III. REVIEW OF THE FCC FORM 1205

#### A. Standard of Review and Burden of Proof

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 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).

B. Discussion and Analysis

1. Commissions

The FCC Form 1205 allows cable operators to recover the costs associated with the maintenance and installation of customer premises equipment. Instructions for FCC Form 1205, at 7, 11. Among the costs that cable operators may recover are the salaries of the technical service personnel who install and maintain equipment; these salaries are included on the form's Schedule B. Id. at 11. The issue of whether a cable operator has properly categorized Schedule B's "Salaries and Benefits," particularly with respect to commissions paid to employees, has arisen in several proceedings before the Cable Division (Exh. CTV-3). We need not address the issue here, since Charter indicated that it would not seek to recover the commission expenses on the FCC Form 1205 at this time (Tr. at 54-55). Therefore, Charter should resubmit its FCC Form 1205, with no commission expenses included on Schedule B.

2. Home Wiring Maintenance

While this matter was pending, Charter announced an important change in the home wiring maintenance plans available to its Massachusetts subscribers. The Company had historically offered to its Massachusetts subscribers an optional cable home wiring maintenance plan (Exh. CTV-9).<sup>2</sup> Approximately 80 percent of Charter's Massachusetts subscribers subscribed to this plan, which covers maintenance expenses for the cable wiring in the home

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<sup>2</sup> Charter did not institute this cable home wiring maintenance plan in its Massachusetts communities, but rather inherited the plan from previous cable operators when it acquired cable systems in Massachusetts.

(Tr. at 69). Under the FCC's rules, the Cable Division regulated the monthly charge for this plan. 47 C.F.R. § 76.923(i).<sup>3</sup> We most recently approved a monthly rate of \$0.34, although the Company continued to charge its previous rate of \$0.33. Charter Communications Entertainment I, L.L.C., CTV 03-6, at 10 (2004); Tr. at 68.

Meanwhile, in its systems nationally, Charter offers an optional "Whole House Wire Maintenance Plan," which covers all communications wiring in the home (Exhs. CTV-7, CTV-9). Charter currently charges \$2.95 per month for this plan (Exh. CTV-7). Charter decided to cease offering its cable home wiring maintenance plan in Massachusetts, and as of February 8, 2005 commence offering its Whole House Wire Maintenance Plan (Exh. CTV-4). Charter claimed that this plan is less costly and more comprehensive than the home wiring plan offered by the incumbent telephone company for \$3.45 per month (Exh. CTV-7). In addition, the Company suggested that offering two cable wiring maintenance plans in Massachusetts would be confusing to its customers and employees (Exh. CTV-9).

We consider whether Charter's discontinuance of its regulated cable home wiring maintenance plan complies with the FCC's rate regulations. The FCC has held that where subscribers own the inside wiring, as is the case with Charter's Massachusetts subscribers,<sup>4</sup> cable operators may offer subscribers either a regulated wire maintenance service plan, or a

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<sup>3</sup> The FCC's rules specifically define "regulated equipment" as including not only converter boxes and remote controls, but also inside wiring. 47 C.F.R. § 76.923(a)(1).

<sup>4</sup> See Request for Clarification of Rate Regulatory Rules: Inside Wire Maintenance, DA 01-154, at 3, ¶ 5, n.16 (2001).



rate based on a cable operator's hourly service charge ("HSC"), or both. TCI of Southeast Mississippi, 10 FCC Rcd 8728, DA 95-1747, at ¶¶ 18-19 (1995). One reason for the FCC's determination was that subscribers have several options; in addition to asking the company to maintain or repair the wiring, subscribers may fix the problem themselves, or may contract with an outside party to make the repair. Id. at ¶ 17. The FCC requires only that subscribers be given the option of having their inside wiring repaired by the cable operator at a regulated rate. The FCC reasoned that the Cable Act and the FCC's rules require cable operators to offer equipment and installation services at rate levels that reflect the operator's actual costs. Id. at ¶ 18. Charter provides such an option (Exh. CTV-7). Even without the cable wire maintenance plan, if a home service call is required that involves inside wiring repairs, the subscriber would be charged a regulated rate, for the repair computed by using the HSC, (id.). This charge would be \$12.75 per half hour or \$25.49 per hour (id.).<sup>5</sup> Therefore, Charter is not required to provide another regulated option.

Charter's Whole House Wiring Plan is yet another option available to Charter's subscribers. The FCC determined that because the Whole House Wire Maintenance Plan is in direct competition with monthly maintenance plans offered by telephone companies, the plan is not subject to its cable rate regulations. Request for Clarification of Rate Regulatory Rules: Inside Wire Maintenance, DA 01-154, at 3-4, ¶¶ 7-10 (2001). While the Cable Division thus lacks authority to regulate the rate for this plan, we nonetheless must ensure that Charter

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<sup>5</sup> Charter's FCC Form 1205 proposes an operator selected HSC of \$25.49 (Exh. Charter-28, at 6).

complies with applicable consumer protection law. We determine that Charter has so complied. Charter has made subscribers aware of the optional nature of the plan in a marketing brochure provided to subscribers who had enrolled in the cable home wiring maintenance plan (Tr. at 69-70). This brochure included an attached postcard that the subscriber could check and return to enroll in the Whole House Wire Maintenance Plan (id. at 70). Subscribers were also informed on the brochure that if they did not enroll in the Plan, repairs for inside wiring would be billed under the HSC rate. We will continue to make certain that subscribers are notified about the optional nature of the Whole House Wire Maintenance Plan.

#### IV. BASIC SERVICE TIER RATES IN THE TOWN OF HADLEY

At the hearing, the Town of Hadley questioned whether Charter is in compliance with the method that its former cable operator, Amrac Clear View (“Amrac”), had used to establish its BST MPR for the Town (Tr. at 73). The Town also sought a confirmation of Charter’s approved BST MPR in the Town, and asked for a clarification of the status of the Town’s cable franchise as a small system under the FCC’s rate regulations (id. at 20). In response, Charter submitted the two orders the Cable Division had issued in 1996 that established Amrac’s BST rates in Hadley (RR-Hadley-2).

The first order the Cable Division issued, approved Amrac’s FCC Form 1230, and prescribed a BST MPR for Hadley of \$11.04. Amrac Clear View, a Limited Partnership, Y-96 SMA (1996). The FCC Form 1230 is a simplified rate form, which may be filed for a small system owned by a small cable company.

47 C.F.R. § 76.934(h).<sup>6</sup> The Town of Hadley observed that the Cable Division in Y-96 SMA had established a rate of return for Amrac of 29.15 percent, and asked whether this rate of return was still in effect (Tr. at 73). However, this rate of return was only applicable to Amrac's unique financial situation, as it existed in 1996. Y-96 SMA, at 5-6. It is not a rate of return that necessarily would apply to Charter, if it adjusted its BST rates in Hadley. The Cable Division's second Amrac rate order, issued on October 24, 1996, established the BST MPR that remains in effect in Hadley. Amrac Clear View, a Limited Partnership, Towns of Belchertown and Hadley: FCC Form 1210 (1996)). Amrac had filed an FCC Form 1210 on September 18, 1996, pursuant to an FCC rule that permits a small system to adjust its BST MPR in accordance with the quarterly rate adjustment method. 47 C.F.R. § 76.934(h)(8)(i).<sup>7</sup> Amrac's FCC Form 1210, which included only an inflation adjustment, proposed a BST MPR for Hadley of \$11.37 that the Cable Division approved. Amrac Clear View, a Limited Partnership, Towns of Belchertown and Hadley: FCC Form 1210. This BST MPR is currently in effect, as neither Amrac nor any of its successors has ever filed another rate form for

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<sup>6</sup> A "small system" is defined as a cable system with 15,000 or fewer subscribers. 47 C.F.R. § 76.901(c). A "small cable company" is a cable company with 400,000 or fewer subscribers. 47 C.F.R. § 76.901(e). The FCC specifically determined that Amrac was both a small system and a small cable company. See AMRAC Clear View, L.P., DA 96-320, at 2, ¶ 4 (1996). Not all of a small cable company's systems qualify for small system status; only those that satisfy the small system definition are eligible. See Greater Chicopee Cablevision, Inc., DA 96-2024 (1996).

<sup>7</sup> Amrac's rate of return did not appear on this FCC Form 1210, because the FCC Form 1210 is a benchmark form that does not include a rate of return in its calculations.

Hadley.<sup>8</sup> Charter currently charges a BST rate in Hadley of \$10.70. See Hadley 2005 Channel Lineup and Monthly Rates notice.<sup>9</sup> The Company testified that any decision whether to increase Hadley's BST rate had not yet been made (Tr. at 13-14). The Company also reported that it was planning to restructure its BST in Hadley, so that all BST channels would be contiguous on the channel lineup (id. at 15).

The Cable Division questioned whether the restructuring would affect Hadley's small system status and affect the location of the headend serving Hadley (id. at 16-17). Charter explained that it has already connected Hadley's cable system to the Company's Chicopee headend (Tr. at 17). Because Hadley's cable system now is connected with the Chicopee headend, we must reconsider its status as a small system under the FCC's rules. The FCC has already ruled that the Chicopee system is not a small system, because it serves substantially more than 15,000 subscribers. Greater Chicopee Cablevision, Inc., DA 96-2024 (1996). Because the Hadley system has been incorporated into the Chicopee headend, the Hadley franchise has lost its small system status. See C-TEC Cable Systems of Michigan, Inc., DA 97-1837 (1997). Nevertheless, a former small system may maintain its "then existing"

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<sup>8</sup> The FCC's small system regulations also permit a cable operator to adjust its BST MPR for a regulated community, by filing an FCC Form 1240 to reflect changes in the number of channels on the BST. 47 C.F.R. § 76.934(h)(8)(ii). Although Hadley's BST has increased from 12 channels in 1996 to 17 channels in 2005, no cable operator serving Hadley has filed an FCC Form 1240 with the Cable Division seeking a rate increase to reflect the addition of BST channels.

<sup>9</sup> The Hadley 2005 Channel Lineup and Monthly Rates notice was filed by Charter with the Cable Division on March 14, 2005, pursuant to the Cable Division's regulations at 207 C.M.R. § 10.02(6).

BST MPR. 47 C.F.R. § 76.934(h)(11). However, it may not increase its current BST MPR to reflect increases in external costs, inflation, or channel additions, until it has re-established initial permitted rates in accordance with some other method of rate regulation prescribed by the FCC. Id. In Hadley's case, Charter may only increase its actual BST rate to \$11.37. If Charter wishes to increase its actual BST rate in Hadley above \$11.37, it must file either the benchmark rate forms FCC Forms 1200, 1210 or 1240, or make a cost of service filing under FCC Form 1220. Id.

#### V. 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 1, 2004, 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, West Brookfield, Westborough, Wilbraham, and Worcester.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts the Charter FCC Form 1205 with the Company's proposed modification, 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. The Cable Division directs Charter to resubmit its FCC Form 1205, reflecting the modification to Schedule B, on or before Thursday, January 3, 2006.

The attached schedule provides Charter's current BST programming rates, as well as its previous, proposed, and approved maximum permitted BST programming rates. The attached schedule also provides, for all communities, Charter's previous and current equipment rates, as well as its proposed equipment rates.

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

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

Issued: December 13, 2005

**BASIC SERVICE TIER PROGRAMMING RATES**

<b>Community</b>	<b>Previous Approved Maximum Permitted Rate</b>	<b>Current Operator Selected Rate Effective February 1, 2005</b>	<b>Proposed Maximum Permitted Rate</b>	<b>Approved Maximum Permitted Rate</b>
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**Central Mass.**

Auburn	\$9.61	\$10.47	\$10.47	\$10.47
Boylston	\$10.11	\$10.63	\$10.63	\$10.63
Dudley	\$10.88	\$11.65	\$11.65	\$11.65
Grafton	\$10.04	\$10.76	\$10.76	\$10.76
Holden	\$8.82	\$9.77	\$9.77	\$9.77
Leicester	\$11.38	\$12.57	\$12.57	\$12.57
Millbury	\$12.09	\$12.94	\$12.94	\$12.94
Northborough	\$9.71	\$10.61	\$10.61	\$10.61
Northbridge	\$10.67	\$11.46	\$11.46	\$11.46
Oxford	\$11.29	\$12.37	\$12.37	\$12.37
Paxton	\$9.69	\$10.15	\$10.15	\$10.15
Southborough	\$10.84	\$11.60	\$11.60	\$11.60
Southbridge	\$11.99	\$12.59	\$12.59	\$12.59
Spencer	\$11.29	\$12.15	\$12.15	\$12.15
Sturbridge	\$10.90	\$11.38	\$11.38	\$11.38
Upton	\$10.68	\$11.39	\$11.39	\$11.39
West Boylston	\$9.89	\$10.26	\$10.26	\$10.26
West Brookfield	\$16.64	\$16.61	\$16.61	\$16.61
Westborough	\$9.75	\$9.42	\$9.42	\$9.42
Worcester	\$10.73	\$11.55	\$11.55	\$11.55

**Western Mass.**

Chicopee	\$11.19	\$12.37	\$12.37	\$12.37
East Longmeadow	\$10.60	\$11.67	\$11.67	\$11.67
Easthampton	\$8.84	\$9.64	\$9.64	\$9.64
Hampden	\$11.45	\$12.58	\$12.58	\$12.58
Ludlow	\$11.93	\$13.06	\$13.06	\$13.06
Southampton	\$8.93	\$9.85	\$9.85	\$9.85
Wilbraham	\$12.52	\$13.69	\$13.69	\$13.69

**REGULATED EQUIPMENT RATES**

<b>Community</b>	<b>Previous Operator Selected Rate</b>	<b>Current Operator Selected Rate Effective February 1, 2005</b>	<b>Proposed Maximum Permitted Rate</b>	<b>Approved Maximum Permitted Rate</b>
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**All Communities**

Remote	\$0.15	\$0.15	\$0.39	pending
Converter 1	\$3.96	\$0.00	\$3.26	pending
Converter-Digital	\$3.96	\$3.96	\$6.76	pending
Converter HD/DVR	-	\$6.95	\$7.89	pending
Cable Card	-	\$1.50	\$1.59	pending

### **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.