



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 11-13

September 27, 2012

Petition of Charter Communications to establish and adjust the basic service tier programming, equipment and installation rates for the communities served by Charter that are currently subject to rate regulation.

RATE ORDER

APPEARANCES:

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FOR: Charter Communications
Petitioner

I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves the petition of Charter Communications’ (“Charter”) seeking to establish basic service tier (“BST”) maximum permitted rates (“MPR”), and equipment and installation rates for its regulated Massachusetts communities. The Department additionally approves a revised refund plan for basic and expanded basic customers in certain Charter communities.

II. PROCEDURAL HISTORY

On September 30, 2011, Charter filed Federal Communications Commission (“FCC”) Forms 1240 with the Department in which Charter proposed BST MPRs for all 49 of its regulated Massachusetts communities.¹ These 49 communities consist of 29 communities in which the Department regulated rates and approved Form 1240 filings prior to this year, and 20 additional communities that were previously regulated under alternative FCC rules applicable to small cable systems. On September 30, 2011, Charter also filed a nationwide FCC Form 1205 that proposed equipment and installation MPRs for all of its regulated Massachusetts communities. Pursuant to FCC regulations, Charter’s proposed BST programming, equipment, and installation rates became effective on January 1, 2012. *See* 47 C.F.R. § 76.933(g).

The Department issued a Notice of Public Hearing, Order of Notice, Procedural Schedule, and its First Set of Information Requests on March 2, 2012. *Petition of Charter Commc’ns to establish & adjust the basic serv. tier programming, equip. & installation rates for the communities served by Charter that are currently subject to rate regulation*, Docket 11-13

¹ These communities are Auburn, Boylston, Brimfield, Chicopee, Douglas, 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, Worcester, Brookfield, Charlton, East Brookfield, Hinsdale, Lanesborough, North Brookfield, West Stockbridge, Belchertown, Hadley, Barre, Berlin, Groton, Harvard, Hubbardston, Oakham, Pepperell, Rutland, Sutton, Uxbridge, and Westport.

(2012) (“Docket”) at 1. On March 14, 2012, Charter filed responses to the Department’s First Set of Information Requests. *Id.* The Department held public and evidentiary hearings on March 27, 2012. *Id.* On April 17, 2012, Charter submitted responses to the Department’s Record Requests issued at the evidentiary hearing. *Id.* On April 26, 2012, Charter submitted a proposed refund plan in response to issues raised in the Department’s first set of Record Requests. *Id.* The Department issued its Second Set of Record Requests on May 8, 2012. *Id.* Charter filed responses to the Department’s Second Set of Record Requests on May 23, 2012. *Id.* On August 20, 2012, Charter submitted an amended refund plan to the Department. *Id.*

The evidentiary record consists of 50 Charter exhibits, eleven responses to Department Information Requests, and eleven responses to Department Record Requests. After review and consideration, the Department approves Charter’s FCC Forms 1240, FCC Form 1205, and August 20, 2012 refund plan, subject to the Department’s findings below.

III. ANALYSIS AND FINDINGS

A. Review of Charter’s FCC Forms 1240 and Refund Plan

In this order, the Department approves the FCC Forms 1240 for the 20 former small system Charter communities that were previously regulated under alternative FCC rules.² The Department also approves the revised proposed MPRs in the 29 Massachusetts communities in which Charter has previously filed FCC Forms 1240. *See* Rate Schedule at Attachment 1. Finally, the Department approves Charter’s proposed refund plan to basic and expanded basic customers as revised and filed with the Department on August 20, 2012. Charter’s approved BST MPRs and operator selected BST programming rates appear in the Rate Schedule below, at Attachment 1.

² Those communities include Barre, Belchertown, Berlin, Brookfield, Charlton, East Brookfield, Groton, Hadley, Harvard, Hinsdale, Hubbardston, Lanesborough, North Brookfield, Oakham, Pepperell, Rutland, Sutton, Uxbridge, West Stockbridge, and Westport.

The FCC created specific forms incorporating the provisions of its rate regulations, upon which a cable operator must calculate its rates. *See* 47 C.F.R. §§ 76.922, 76.930. The FCC Form 1240 allows a cable operator to update annually its BST programming rates to account for inflation; changes in the number of regulated channels; and changes in external costs, including programming costs, copyright costs, and franchise related costs (“FRCs”). *See* 47 C.F.R. § 76.922(e). To adjust the rates 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. *See* 47 C.F.R. §§ 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fees, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRCs to the extent they are reasonably certain and reasonably quantifiable. However, such projections are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

The standard under which the Department must review rate adjustments on the FCC Form 1240 is found in the FCC’s rate regulations. *See* 47 C.F.R. § 76.922(a). Specifically, the FCC directed local rate regulators, such as the Department, to ensure that the approved rates are in compliance with the Communications Act of 1934, as amended (“the Communications Act”), and do not exceed the maximum permitted charges calculated by the FCC’s rate forms. *Id.* The Department may accept, as in compliance with the statute, BST rates that do not exceed the approved maximum permitted charge as determined by federal regulations. *See* 47 C.F.R. §§ 76.922(a), 76.922(c). In addition, the Department shall approve only those rates it deems reasonable. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c.

166A, §§ 2, 15. The cable operator has the burden of proof to demonstrate that its proposed rates for BST programming comply with Section 623 of the Communications Act, and implementing regulations. *See* 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*, 8 F.C.C.R. 5631, at 5716, ¶ 128 (May 3, 1993) (“*FCC Rate Order*”); 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator).

1. Former Small System Communities

As noted above, Charter, for the first time, has filed FCC Forms 1240 for 20 former small system communities, which the Department now approves. Between 1996 and 1999, Charter acquired several Massachusetts cable franchises from United Video and Avalon Cable. *See Charter Commc’ns*, Y-00 (Phase I) (November 30, 2000). These systems were regulated under the FCC’s alternate rate regulation rules applicable to small cable systems. *See 6th Report & Order & 11th Order on Reconsideration*, FCC 95-196, 10 FCC Rcd. 7393 (1995) (the “*Small System Order*”). Under the *Small System Order*, “[w]hen a system that has established rates in accordance with Form 1230 exceeds 15,000 subscribers, the system may maintain its then existing rates.” *Id.* at ¶ 73. The FCC explained that the phrase “then existing rates” refers to the MPR that the system is entitled to charge as determined by its most recently filed FCC Form 1230. *See Insight Commc’ns Co., L.P.*, DA 95-2334 at ¶ 42 (rel. Nov. 13, 1995). The FCC concluded, “[t]hus, after passing the 15,000 subscriber standard, the system may continue to increase rates up to the maximum amount permitted by the most recent Form 1230, subject only to the standard 30 days’ notice requirement.” *Id.*

In the 20 Charter communities at issue in this order, identified in n. 2, *supra*, the most recent FCC Form 1230 filings date from December of 2000. *See* CTV 00-10. Since that time, Charter has maintained rates in those communities below the MPRs established in the CTV 00-10 proceeding. Hence, Charter made no subsequent filings with the Department until September 30, 2011. To permit itself to transition from regulation under the rules set forth in the Small System Order and establish rates subject to the FCC's traditional rate regulations, Charter filed new FCC Forms 1240 for each of the 20 communities. *See* Docket at 1.

The FCC Form 1240 requires “a series of calculations, involving both the projection of future events and an accounting of events which are known to have happened.” *See* Instructions for FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services at 1 (July 1996)(“FCC Form 1240 Instructions”). Consequently, many of the calculations undertaken when completing a FCC Form 1240 are dependent on prior year FCC Form 1240 numbers. *Id.* Because these communities were previously regulated under the small system rules, there was no prior year FCC Form 1240 information upon which Charter could rely in its filings. As a proxy for previous years FCC Form 1240 information, Charter has utilized its most recent actual rates charged in each former small system community. Charter then generated proposed MPRs in their FCC Form 1240s by adding to those historical rates only increases in external costs and inflation for the current projected period as is permitted by the FCC. *See* FCC Form 1240 Instructions at 2, 9. In instances where a community is transitioning to regulation under the FCC Form 1240 for the first time, use of such a proxy is not without precedence. *See Review by the Cable Television Division of the Department of Telecommunications and Energy of FCC Forms 1240 and 1205 Filed by Charter Commc'ns.*, CTV 05-5/06-2 (October 16, 2006)(“Brimfield Order”). The Department

addressed a similar situation in 2006 when the Charter community of Brimfield requested regulation for the first time. *Id.* at 6-8. In the Brimfield Order, the Department approved the use of the current BST rate as a proxy because no historical rate information existed for the previously unregulated Town of Brimfield. *Id.* at 5. Similarly, historical rate information in the former small system communities is largely unavailable. Moreover, as much of the data involved is based on FCC Forms 1230 dating to 1996, the Department determines it would be overly burdensome to recreate it. The Department has reviewed the FCC Forms 1240 for the former small system communities and finds that Charter's use of the most recent rates charged in each community is a reasonable proxy for use in calculating its proposed MPRs. Hence, the Department finds that Charter's proposed MPRs in the 20 former small system communities are reasonable, in accordance with FCC regulations, and therefore approved. *See* Attachment 1.

*2. Charter's Forms 1240 In Previously Regulated Communities and
Proposed Refund Plan*

The Department also approves the FCC Forms 1240 for the 29 communities for which Charter previously has submitted such forms with the Department, subject to its approval of Charter's proposed refund plan discussed below. Charter's refund plan results from the fact that upon review of the FCC Forms 1240 for these 29 communities, the Department discovered that the "Period 1 Average Rate" found on line 813 of Worksheet 8 did not represent the average rate charged during the true-up as required. *See* FCC Form 1240 Instructions at 28. At the evidentiary hearing, the Department and Charter determined that the anomaly on line 813 of Worksheet 8 was the result of mathematical error where Charter mistakenly calculated the average rate for a one-year period over 11 months instead of 12. *Tr.* at 9. The Department

issued a record request to Charter seeking clarification of this issue, and if necessary, requiring Charter to update its FCC Forms 1240 for the affected communities. *Id.*

On April 17, 2012, Charter responded to the Department's record request and filed amended FCC Forms 1240 for the 29 communities. *See* D.T.C. RR 1-1. Charter also informed the Department that at that time, it was "in the process of analyzing the data to prepare a refund plan based on the revision of line '813 Period 1 Average Rate'." *Id.* On April 26, 2012, Charter submitted an initial refund plan to the Department. *See* Docket at 1. After a further round of record requests, Charter submitted a revised refund plan on August 20, 2012. *Id.* The Department finds that this revised refund plan is reasonable and accurately reflects the overcharge to basic and expanded basic customers, plus interest for the correct period of time.

With the mathematical error identified above addressed by the revised refund plan, the Department finds that Charter's amended FCC Forms 1240 for the affected community are reasonable and are prepared in accordance with FCC regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15. Therefore, the Department approves Charter's FCC Forms 1240, as amended on April 17, 2012, for its 29 previously regulated Massachusetts communities and additionally approves Charter's proposed refund plan as amended on August 20, 2012.

B. Review of the FCC Form 1205

In its FCC Form 1205 filing, Charter proposes to adjust its maximum permitted equipment and installation rates consistent with FCC rate regulations. The Department has analyzed Charter's proposed adjustments, and approves Charter's FCC Form 1205 as filed. Charter's approved BST MPRs and operator selected rates for equipment and installations appear in the Rate Schedule in Attachment 1.

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 for Determining Costs of Regulated Cable Equipment and Installation*, at 1, 7, 11-13 (June 1996) (“*FCC Form 1205 Instructions*”). A cable operator prepares the FCC Form 1205 on an annual basis using information from the cable operator’s previous fiscal year. *See id.* at 2-3. In this proceeding, the Department reviews Charter’s nationwide FCC Form 1205 for the fiscal year ending December 31, 2011. *See* Exh. Charter-1, at 1.

Subscriber charges established in the FCC Form 1205 may not exceed charges based on actual costs in accordance with the FCC’s regulatory requirements. *See* 47 C.F.R. § 76.923(a)(2). The cable operator has the burden of proof to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act and its implementing regulations. *See* 47 U.S.C. § 543; *FCC Rate Order* at 5716, ¶ 128; 47 C.F.R. § 76.937(a).

In this proceeding, the Department inquired into a substantial increase in Charter’s accumulated depreciation when compared to the previous year’s filing. *See* D.T.C. IR 1-8; 1-9; and 1-10. Charter explained that accounting rules required the company to adjust the value of its property, plant, and equipment (“PP&E”) to fair market value upon emergence from bankruptcy. *See* D.T.C. IR 1-9. This required Charter to zero out its existing accumulated depreciation and set a current fair market value for its PP&E. *Id.* Charter indicated that “[t]he fair market value was determined by a third party valuation company and audited by KPMG.” *Id.* However, “[p]er the valuation company, standard digital boxes we [Charter] had in customer homes were only assigned one year of remaining economic life.” *Id.* As a result, Charter’s FCC Form 1205 had to account for a large amount of accumulated depreciation in the current year.

Although Charter's accumulated depreciation figure raised initial concerns, the Department accepts Charter's explanation that the high figure is a result of the company's emergence from bankruptcy. Because Charter's depreciation of PP&E is expected to stabilize going forward, the Department finds that Charter's FCC Form 1205 as filed is accurate and that its calculations of proposed equipment and installation rates are in accordance with the FCC regulations. *See* 47 C.F.R. § 76.923(a)(2).

III. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That Charter's FCC Forms 1240, as filed on September 30, 2011, for the communities of Barre, Belchertown, Berlin, Brookfield, Charlton, East Brookfield, Groton, Hadley, Harvard, Hinsdale, Hubbardston, Lanesborough, North Brookfield, Oakham, Pepperell, Rutland, Sutton, Uxbridge, West Stockbridge, and Westport are approved; and it is

FURTHER ORDERED: That Charter's FCC Forms 1240, as amended on April 17, 2012, for the communities of Auburn, Boylston, Brimfield, Chicopee, Douglas, Dudley, East Longmeadow, Easthampton, Grafton, Hampden, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southborough, Southbridge, Southampton, Spencer, Sturbridge, Upton, West Boylston, West Brookfield, Westborough, Wilbraham, and Worcester are approved; and it is

FURTHER ORDERED: That Charter's Proposed Refund Plan, as revised on August 20, 2012, is approved; and it is

FURTHER ORDERED: That Charter's FCC Form 1205, as filed on September 30, 2011, is approved.

By Order of the Department

/s/ _____ Geoffrey G. Why _____
Geoffrey G. Why, Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and

Cable may be brought pursuant to applicable federal and state laws.