



REDACTED VERSION

August 2, 2017

Sara Clark, Secretary
Cable Television Division
Department of Telecommunications & Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

Re: Charter Communications

First Set of Information Requests: Docket DTC 16-4

Dear Ms. Clark:

Enclosed please find Charter Communications ("Charter") response to the First Set of Information Requests concerning the FCC Form 1240 and 1205 filings currently under review for 2017 rates.

Accompanying this response is a Motion for Protective Treatment of Confidential Information. A confidential version and a public, redacted version are being submitted simultaneously herewith.

If you have any further questions or comments please feel free to contact me at (817) 298-3689.

Respectfully yours,

A handwritten signature in cursive script that reads "Melissa Robinson".

Melissa Robinson
Senior Regulatory Analyst

Enclosures

Cc: Vicki DeSantis
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Commonwealth of Massachusetts
Department of Telecommunications and Cable
Cable Television Division
Docket No. DTC 16-4

MOTION OF CHARTER COMMUNICATIONS FOR PROTECTIVE
TREATMENT OF CONFIDENTIAL INFORMATION

Charter Communications (“Charter”) hereby requests that the Department of Telecommunications and Cable (the “Department”) grant this motion to provide confidential treatment for certain information provided in this proceeding involving the Department’s investigation of Charter’s proposed basic service tier programming, equipment and installation rates (*See* D.T.C. 16-4). Specifically, Charter requests that confidentiality be afforded to portions of the responses to Information Request 1-7, which provides detailed information regarding Charter’s retransmission consent fees in its Massachusetts regulated franchise areas. As grounds for this request, Charter states that the retransmission consent fee information is confidential, competitively sensitive and proprietary information under G.L. c.25C § 5.

I. Standard of Review

Confidential information may be protected from public disclosure in accordance with G.L. c. 25C § 5, which provides in part that:

[T]he department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the department shall protect only so much of the information as is necessary to meet such need.

The Department has previously recognized that competitively sensitive information is entitled to protective status. Indeed, the Department has provided confidential treatment for retransmission consent information in prior rate reviews. *See, e.g., Hearing Officer’s Ruling on Motion of Comcast Cable Communications, LLC, Tr. 8, D.T.C. 10-8 (August 3, 2011) (“Comcast Protective Order I”), Hearing Officer Ruling on Motion for Protective Order, DTC 12-2 (Nov. 27, 2012) (“Comcast Protective Order II”), Hearing Officer’s Ruling on Motion for Protective Treatment of Confidential Information, DTC 13-5 (Feb. 14, 2014) (“Comcast Protective Order III”), Hearing Officer’s Ruling on Motion for Protective Treatment of Confidential Information, DTC 14-4 (August 6, 2015) (“Comcast Protective Order IV”), and Hearing Officer’s Ruling on Motion for Protective Treatment, DTC 15-3 (June 20, 2016) (“Comcast Protective Order V”).*

II. Argument

The Department sets forth a three-part standard for determining the applicability of G.L. c. 25C § 5. First, the information for which protective treatment is sought must constitute the type of information that can be exempted from public disclosure (e.g., trade secrets, confidential or competitively sensitive or other proprietary information). The retransmission consent fee information requested by the Department is considered by Charter to be proprietary and commercially sensitive information. This information is not otherwise publicly available to Charter's competitors. Public disclosure of this information would provide competitors with cost information giving them an unfair competitive advantage. Moreover, this information could form the basis for pricing and market strategies by competitors – including broadcasters and cable providers. In addition, release of this information could also disadvantage the parties to these contracts (including entities that are not the subject of this proceeding) in their pricing negotiations with third parties. Finally, the Department has ruled in the past that these types of costs are confidential information and exempt from public disclosure. *See, e.g., Comcast Protective Order I; Comcast Protective Order II; Hearing Officer's Ruling on the Motion of Coxcom, Inc., d/b/a Cox Communications New England for Protective Order, D.T.C. 08-8 (2009); Comcast Protective Order IV. See also Comcast Protective Order V at pp. 4 and 5* (“[T]he Department finds Comcast has demonstrated that the information for which confidential treatment is sought constitutes confidential, competitively sensitive, or proprietary information. . . . The Department agrees that disclosure of the detailed information regarding Comcast's consent fees could unfairly put Comcast in a precarious competitive position.”)

Second, the party seeking protection must overcome the presumption that the material is public in nature and prove the need for non-disclosure of the information. As noted above, the information the Department is requesting is not publicly available. Moreover, Charter maintains contractual relationships with the broadcasters carried on its systems. Under these contracts, Charter is prohibited from publicly disclosing the terms and conditions, including the fees paid. As such, disclosure of this information to the Department without the grant of protective treatment would violate Charter's contractual agreements with broadcasters.

Charter and broadcasters clearly treat this type of cost material as confidential and competitively sensitive. Charter's business practices ensure that proprietary, commercially sensitive information of this nature is not disclosed to any third party in the ordinary course of business, unless under the umbrella of a non-disclosure agreement. In fact, the Department has recently ruled that the “Department regularly accords confidential treatment to this type of information.” *See Comcast Protection Order V* at p. 8.

Although Charter has not assigned a specific name to each broadcast station in this exhibit, all of the concerns raised above regarding confidentiality and potentially adverse competitive outcomes remain. A review of disaggregated data would reveal a variety of confidential, competitively sensitive information that is not otherwise publicly available.

Third, and finally, where a need for protective treatment has been established, the Department may limit the time period the non-disclosure of the information is in effect. Charter requests that, if the Department is absolutely compelled to limit the period of confidentiality, the Department treat these materials as having confidential status for at least five (5) years, with an opportunity to renew its request for confidential treatment at the end of that five year period based upon a showing of need for continuing protection. *See Comcast Protective Order V* at p. 10. Charter submits that a minimum five-year period is absolutely necessary to ensure that these materials will not be of such great competitive value to Charter's competitors.

III. Conclusion

For these reasons, Charter requests that the Department grant protection from public disclosure of the confidential information submitted in this proceeding in accordance with G.L. c. 25C §5. Should the Department have any concerns regarding the grant of protection from public disclosure for these materials, or if any request by a third party is made for access to these documents, Charter respectfully requests notification to the undersigned to amend and/or clarify Charter's request for confidential treatment *before* the Department releases the information.

Respectfully submitted,

CHARTER COMMUNICATIONS

By: _____ / s / _____

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August 1, 2017

**Massachusetts Department of Telecommunications and Cable
Cable Television Division
First Set of Information Requests
Charter Communications Docket No. DTC 16-4**

FCC Form 1240

- D.T.C. 1-1 Referring to Charter's removal of its Franchise Related Costs ("FRCs") from its FCC Forms 1240 and calculating its FRCs on a separate worksheet:
- a) Please provide a narrative explaining why Charter elected to remove FRCs from its FCC Forms 1240.
 - b) State whether Charter changed the methodology it previously used to calculate its FRCs. If so, provide complete and detailed documentation of the new methodology.
 - c) Please provide a narrative explaining any effect that Charter's removal of its FRCs from its FCC Forms 1240 had on the amount of the FRCs, as compared to what the FRCs would have been if not removed from the FCC Forms 1240.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

Charter removed Franchise Related Costs ("FRC") from Worksheet 7 of the Form 1240 for 2 key reasons: 1) FRCs are itemized as a separate line item on the subscriber bill, and the inclusion of FRCs in the Form 1240 created confusion each year (*i.e.*, having to back these costs out of the maximum permitted rate ("MPR") to show the itemized Basic Service Tier i rate; and 2) to normalize the FRC pass-through throughout the life of the franchise agreement to minimize fluctuations in the itemized pass-through.

Charter maintained its overall categorization of FRCs, but did adjust the methodology used to calculate FRCs. Charter previously did not include franchise required equipment grant payments until the year the payment was actually made. Under this historic approach, the FRC pass-through varied over the life of the franchise, with the pass-through increasing and decreasing depending on new payments being added and old payments being deleted from the calculation during the franchise term.

Under the new methodology, these costs are included in the first year of the franchise agreement and collectively amortized over the entire franchise term (with first-time transitional adjustments to avoid any double-recovery, adjustments for "present value" and a "true-up" mechanism each year). This approach helps to normalize the pass-through to the customer each year. The change was not undertaken for the purpose of either increasing or decreasing overall recovery over the franchise term, but to minimize fluctuations in Charter's itemized FRC. The overall FRC recovery should be similar to the prior overall FRC recovery. We believe this alternative approach to the FRC calculation is consumer friendly and consistent with the FRC approach used by other regulated Massachusetts cable operators.

**Massachusetts Department of Telecommunications and Cable
Cable Television Division
First Set of Information Requests
Charter Communications Docket No. DTC 16-4**

FCC Form 1240

D.T.C. 1-2 Please explain why the December 22, 2016, Rate Notices Charter filed for Brookfield, Charlton, Dudley, East Brookfield, and West Brookfield do not include the adjustments to the Broadcast TV Surcharges in those communities.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

There was no adjustment to the Broadcast TV Surcharges in these communities. Although the current rate could have been increased to a higher rate, Charter decided not to implement the increase.

**Massachusetts Department of Telecommunications and Cable
Cable Television Division
First Set of Information Requests
Charter Communications Docket No. DTC 16-4**

FCC Form 1240

D.T.C. 1-3 Please provide current Rate Cards for the 16 “Legacy Charter Regulated Communities,” as identified in Charter’s Updated Current and February 1, 2017 Permitted Rates Worksheet, filed on November 14, 2016.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

Charter will send the rate cards as soon as they are available. We are still trying to gather this information.

**Massachusetts Department of Telecommunications and Cable
Cable Television Division
First Set of Information Requests
Charter Communications Docket No. DTC 16-4**

FCC Form 1240

D.T.C. 1-4 Please provide Worksheet 8 for the FCC Form 1240 Charter filed for Lee, Lenox, and Stockbridge.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

See attached

DTC 1-4

Worksheet 8 - True-Up Rate Charged

For instructions, see Appendix A of Instructions For FCC Form 1240

Question 1. How long is the True-Up Period 1, in months?

12

Question 2. How long is the True-Up Period 2, in months?

12

Line	Line Description	a Basic	b Tier 2	c Tier 3	d Tier 4	e Tier 5
801	Month 1	\$14.5600				
802	Month 2	\$14.5600				
803	Month 3	\$14.5600				
804	Month 4	\$14.5600				
805	Month 5	\$14.5600				
806	Month 6	\$14.5600				
807	Month 7	\$14.5600				
808	Month 8	\$14.5600				
809	Month 9	\$14.5600				
810	Month 10	\$14.5600				
811	Month 11	\$14.5600				
812	Month 12	\$14.5600				
813	Period 1 Average Rate	\$14.5600				

814	Month 13	\$14.5600				
815	Month 14	\$14.5600				
816	Month 15	\$14.5600				
817	Month 16	\$14.5600				
818	Month 17	\$15.2500				
819	Month 18	\$15.2500				
820	Month 19	\$15.2500				
821	Month 20	\$15.2500				
822	Month 21	\$15.2500				
823	Month 22	\$15.2500				
824	Month 23	\$15.2500				
825	Month 24	\$15.2500				
826	Period 2 Average Rate	\$15.0200				

**Massachusetts Department of Telecommunications and Cable
Cable Television Division
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FCC Form 1240

D.T.C. 1-5 State whether the programming costs and retransmission consent fees provided in Lines 701 and 702, respectively, of Worksheet 7 of the FCC Forms 1240 for Lee, Lenox, Stockbridge, Dalton, Pittsfield, and Richmond were originally contracted for by Time Warner Cable Inc. or Charter.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

The programming costs and retransmission consent fees reported on the Form 1240 are based on the specific contract applicable at the particular time at issue. Accordingly, there is no uniform answer to this inquiry. In some instances, the programming costs and retransmission consent fees reported might reflect contract terms negotiated by Time Warner Cable, and, in other instances, they reflect contract terms negotiated by Charter.

Massachusetts Department of Telecommunications and Cable
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FCC Form 1240

D.T.C. 1-6 Please explain the negative "True-Up Segment for Projected Period" in Line I8 of Charter's FCC Form 1240 for Hadley, and include an explanation of the "Hadley Inflation Adjustment for Prior Year" in Line H7 of Hadley's FCC Form 1240.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

In reference to Charter Communications Docket No. 15-4, Question 1-1, Charter had "requested a special true-up be undertaken in the next rate cycle rather than a rate refund" due to an adjustment to the inflation factor. This only effected Hadley since the resulting MPR dropped below the current rate as of that time. See calculation below.

Hadley Inflation Adjustment for Prior Year

(\$0.13) Adjustment per Subscriber

1577 Customers in TU

12 Months

(\$2460.12) Total Adjustment

Communication last year was as follows:

When preparing the Form 1240 in October 2015, the attached FCC Public Notice DA15-1195, dated October 19, 2015, was obtained from Jane Frenette of the FCC, who had calculated the inflation factors. As these were the publicly available inflation figures at the time, I properly incorporated them into the Form 1240s. When it was noted, with receipt of this First Set of Information Requests, that the factor of 2.65% is no longer associated with Q4 2014, I contacted the FCC regarding the change. Katie Costello, who approves the public notices, acknowledged that the original published figure had been subsequently revised to now show 0.12% for the 4th Quarter 2014.

Because the 2.65% was the publicly available inflation figure at the time the Charter Form 1240s were submitted, we believe it is appropriate for Charter to rely on that figure. As a courtesy, however, we are providing informational Worksheets that show the requested revision. Please note that, with the sole exception of Hadley, the revised MPRs still exceed Charter's OSRs. Under the circumstances, in the event the Department concludes that a small rate adjustment is necessary for Hadley, Charter requests a special true-up be undertaken in the next rate cycle rather than a rate refund.

**Massachusetts Department of Telecommunications and Cable
Cable Television Division
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FCC Form 1240

D.T.C. 1-7 For all rate-regulated communities, please provide the retransmission consent costs for each channel.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

Please see attached requested data and request for confidentiality applicable to this question.

REDACTED VERSION

Group 1: Harvard, Holden, Paxton, West Boylston
Group 2: Spencer, Sturbridge
Group 3: Chicopee, Belchertown, Brimfield, East Longmeadow, Easthampton, Hadley, Hampden, Ludlow, Southhampton, Wilbraham

Group 1:	Current Year True-Up Period (Oct 2015 - Sept 2016)	Projected Period (Feb 2017 - Jan 2018)
Retransmission Consent:	Average Per Subscriber	Average Per Subscriber
Station A		
Station B		
Station C		
Station D		
Station E		
Station F		
Average	\$4.64	\$5.69

Group 2:	Current Year True-Up Period (Oct 2015 - Sept 2016)	Projected Period (Feb 2017 - Jan 2018)
Retransmission Consent:	Average Per Subscriber	Average Per Subscriber
Station A		
Station B		
Station C		
Station D		
Station E		
Station F		
Station G		
Average	\$5.48	\$6.55

Group 3:	Current Year True-Up Period (Oct 2015 - Sept 2016)	Projected Period (Feb 2017 - Jan 2018)
Retransmission Consent:	Average Per Subscriber	Average Per Subscriber
Station A		
Station B		
Station C		
Station D		
Average	\$3.75	\$4.47

REDACTED VERSION

Group 4: Lee, Lenox, Stockbridge, Dalton, Richmond, Pittsfield

Group 1:	Current Year True-Up Period 1 (Oct 2014 - Sept 2015)	Current Year True-Up Period 2 (Oct 2015 - Sept 2016)	Projected Period (Feb 2017 - Jan 2018)
Retransmission Consent:	Average Per Subscriber	Average Per Subscriber	Average Per Subscriber
Station A			
Station B			
Station C			
Station D			
Station E			
Station F			
Station G			
Average	\$4.13	\$5.35	\$8.14

REDACTED VERSION

Group 1 Auburn, Upton, Worcester, Pepperell, Uxbridge
Group 2: Dudley, West Brookfield, Brookfield, East Brookfield, Charlton

	2014 Projected Period (Feb 2014 - Jan 2015)	2015 Projected Period (Feb 2015 - Jan 2016)	2016 Projected Period (Feb 2016 - Jan 2017)	2017 Projected Period (Feb 2017 - Jan 2018)
Group 1:				
Retransmission Consent:	Average Per Subscriber	Average Per Subscriber	Average Per Subscriber	Average Per Subscriber
Station A				
Station B				
Station C				
Station D				
Station E				
Station F				
Average	\$3.35	\$4.60	\$4.74	\$5.69

	2014 Projected Period (Feb 2014 - Jan 2015)	2015 Projected Period (Feb 2015 - Jan 2016)	2016 Projected Period (Feb 2016 - Jan 2017)	2017 Projected Period (Feb 2017 - Jan 2018)
Group 2:				
Retransmission Consent:	Average Per Subscriber	Average Per Subscriber	Average Per Subscriber	Average Per Subscriber
Station A				
Station B				
Station C				
Station D				
Station E				
Station F				
Station G				
Average	\$4.02	\$5.38	\$5.60	\$6.55

REDACTED VERSION

Harvard, Holden, Paxton, West Boylston
Spencer, Sturbridge

[illegible]

Total Retransmission Consent Costs per 1240

[illegible]

Total Retransmission Consent Costs per 1240

[illegible]

Total Retransmission Consent Costs per 1240

[illegible]

Total Retransmission Consent Costs per 1240

Group 3:	True-up Period - Line 702 Retransmission Consent Fees												Average
	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	
Station A													
Station B													
Station C													
Station D													
Total Retransmission Consent Costs per 1240	\$3.24	\$3.24	\$3.24	\$3.44	\$3.44	\$3.44	\$3.44	\$3.44	\$4.30	\$4.30	\$4.30	\$4.30	\$5.75

Total Retransmission Consent Costs per 1240

[illegible]

Total Retransmission Consent Costs per 1240

REDACTED VERSION

Lee, Lenox, Stockbridge, Dalton, Richmond, Pittsfield

Group 4:	True-up Period 1 - Line 702 Retransmission Consent Fees												
	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Average
Station A													
Station B													
Station C													
Station D													
Station E													
Station F													
Station G													
Total Retransmission Consent Costs per 1240	\$3.87	\$3.87	\$3.87	\$4.20	\$4.20	\$4.20	\$4.20	\$4.20	\$4.20	\$4.25	\$4.25	\$4.25	\$4.13

	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Average
	True-up Period 2 - Line 702 Retransmission Consent Fees												
Station A													
Station B													
Station C													
Station D													
Station E													
Station F													
Station G													
Total Retransmission Consent Costs per 1240	\$4.25	\$4.25	\$4.25	\$4.99	\$4.99	\$4.99	\$5.98	\$5.98	\$5.91	\$5.91	\$5.91	\$5.91	\$5.35

	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Average
	Projected Period - Line 702 Retransmission Consent Fees												
Station A													
Station B													
Station C													
Station D													
Station E													
Station F													
Station G													
Total Retransmission Consent Costs per 1240	\$7.40	\$7.57	\$7.57	\$7.57	\$8.44	\$8.44	\$8.44	\$8.44	\$8.44	\$8.44	\$8.44	\$8.49	\$8.14

Group 1:

	2015 Projected Period - Line 702 Retransmission Consent Fees												
	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Average
Station A													
Station B													
Station C													
Station D													
Station E													
Station F													
Total Retransmission Consent Costs per	\$4.58	\$4.58	\$4.58	\$4.58	\$4.58	\$4.58	\$4.58	\$4.58	\$4.58	\$4.58	\$4.58	\$4.79	\$4.60

[illegible]

[illegible]

**Massachusetts Department of Telecommunications and Cable
Cable Television Division
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FCC Form 1205

D.T.C. 1-8 Please provide the "Attached List" Charter references on page one of its FCC Form 1205.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

See attached

DTC 1-8

**Charter Communications
Massachusetts Regulated Communities**

MA0290	Auburn
MA0286	Belchertown
MA0081	Brimfield
MA0305	Brookfield
MA0018	Charlton
MA0304	Chicopee
MA0184	Dudley
MA0054	East Brookfield
MA0103	East Longmeadow
MA0334	Easthampton
MA0339	Hadley
MA0285	Hampden
MA0073	Harvard
MA0286	Holden
MA0092	Ludlow
MA0285	Paxton
MA0312	Pepperell
MA0179	Southampton
MA0087	Spencer
MA0036	Sturbridge
MA0043	Upton
MA0319	Uxbridge
MA0313	West Boylston
MA0209	West Brookfield
MA0107	Wilbraham
MA0242	Worcester

**Massachusetts Department of Telecommunications and Cable
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FCC Form 1205

D.T.C. 1-9 Referring to Schedule C of Charter's FCC Form 1205:

- a) Please describe the new category of equipment labeled "DTA."
- b) Provide the date on which Charter began deploying DTAs in Massachusetts.
- c) State whether Charter's DTAs are ever accompanied by any additional charges or fees, including but not limited to charges for a guide service of any kind, for any level of subscriber.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

- a) A DTA is a one-way receiver that lacks the full functionality of a two-way set-top box.
- b) Legacy Charter typically did not deploy DTAs for residential customers. Legacy Time Warner residential customers in Massachusetts, however, were offered DTAs prior to the transition to Charter.
- c) Legacy Time Warner's residential DTA leases do not include any additional charges or fees (*e.g.*, no guide service).

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FCC Form 1240

D.T.C. 1-10 Please describe the two Spectrum Reach channels, referenced in Charter's "Form 1240 Filing - Additional Information & Attachments," that Charter added to its basic service tier channel lineups.

Response: *Person providing the response: Melissa Robinson, Senior Regulatory Analyst*

The two Spectrum Reach channels that were added to the basic service tier channel lineup are called "As Seen on TV" and "Shop TV". They are channels that were formerly localized in one part of the country, but are now carried throughout the Charter footprint. These channels do not carry duplicate programming of any other basic service tier channel.