



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 18-7

October 24, 2019

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

RATE ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

In this Order, the Department of Telecommunications and Cable (“Department”) approves the Maximum Permitted Rates (“MPRs”) and Operator Selected Rates (“OSRs”) for basic service tier (“BST”) programming, equipment, and installation proposed by Charter Communications (“Charter”) for its rate-regulated Massachusetts communities.

On November 1, 2018, Charter filed Federal Communications Commission (“FCC”) Forms 1240, proposing BST programming MPRs for each of its rate-regulated communities. *Petition of Charter Commc’ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the cmtys. in Mass. served by Charter Commc’ns that are currently subject to rate regulation*, D.T.C. 18-7 (Nov. 1, 2018); Exhs. 1-32. Contemporaneously, Charter filed an FCC Form 1205, proposing equipment and installation MPRs for its rate-regulated communities. Exh. 33. In accordance with FCC rules, Charter’s proposed BST programming, equipment, and installation rates became effective on February 1, 2019. *See* 47 C.F.R. § 76.933(g).

On May 16, 2019, the Department issued an Order of Notice and a Notice of Public Hearing in this proceeding and provided direct notice of the proceeding to each affected

municipality. On June 24, 2019, the Department issued a revised Order of Notice and a revised Notice of Public Hearing in this proceeding and provided direct notice of the revised proceeding dates to each affected municipality. On June 19, 2019, the Department issued its First Set of Information Requests in this proceeding to Charter. On July 9, 2019, Charter filed its responses to the Department's First Set of Information Requests. DTC IR 1-1 to 1-11. The Department did not receive any petitions to intervene in this proceeding.

On August 7, 2019, the Department held public and evidentiary hearings and issued to Charter three Record Requests. *See* Transcript of Record ("Tr."). Charter submitted its responses to the Record Requests on August 20, 2019. DTC RR-1 to RR-3. On September 30, 2019, Charter submitted a Supplemental Response to DTC RR-2. DTC RR-2 Supplement.

II. ANALYSIS AND FINDINGS

After review and consideration, the Department approves Charter's FCC Forms 1240 and Charter's FCC Form 1205, as described below. Charter's approved MPRs and OSRs are in the Rate Schedule included with this Rate Order as Attachment 1.

A. Review of Charter's FCC Forms 1240

On its FCC Forms 1240, Charter proposes changes to each of the BST programming MPRs in its rate-regulated communities. The Department approves Charter's FCC Forms 1240 as filed.

A cable operator must calculate its BST programming rates using FCC forms that incorporate the FCC's rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. The FCC allows a cable operator to update its BST programming rates annually to account for inflation, changes in the number of regulated channels, and changes in external costs, including retransmission consent fees, programming costs, copyright costs, and FRCs. *See id.* § 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, a cable operator must demonstrate that its projections are reasonably certain and reasonably quantifiable. *See id.* § 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 id.* § 76.922(e)(2)(ii)(A).

The FCC's rate regulations establish the standard under which the Department reviews rate adjustments on the FCC Form 1240. *Id.* § 76.922(a). Specifically, the FCC directs local rate regulators, such as the Department, to ensure that rates comply with the Communications Act of 1934, as amended ("Communications Act"), and to ensure that the rates do not exceed the MPRs calculated by the FCC's rate forms. *Id.* The Department may accept BST rates that do not exceed the approved MPRs as determined by federal regulations. *Id.* § 76.922(a), (c). The Department only approves rates it deems reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, §§ 2, 15; 47 C.F.R. § 76.937(d)-(e). A cable operator has the burden to demonstrate that its proposed BST programming rates comply with Section 623 of the Communications Act, including a demonstration that the proposed rates are reasonable. 47 U.S.C. § 543; *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd. 5631, 5716-17, *Report & Order & Further Notice of Proposed Rulemaking* (1993) ("1993 FCC Rate Order"); 47 C.F.R. § 76.937(a), (d).

In addition, the FCC permits cable operators to report projected costs, including costs associated with programming, that they believe are reasonably certain and reasonably quantifiable. *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 11 FCC Rcd. 388, 418-19, *Thirteenth Order on*

Reconsideration (1995). In particular, the FCC has built into its Form 1240 a true-up mechanism to account for actual costs that vary from those Projected Period estimates.¹

If the Department finds that the cable operator charged subscribers more than the MPR that the FCC's regulations produced or should have produced, the Department may order the cable operator to file a refund plan subject to Department approval, containing a proposal for refunding subscribers the amount they were overcharged. *See Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams, & Pittsfield Sys.*, D.T.C. 13-10, *Rate Order* at 28 (Nov. 26, 2014); 47 C.F.R. § 76.942. Whenever the Department rejects a request for a rate increase, it must issue a written decision to that effect. 47 C.F.R. § 76.936.

The Department determines that the data on each of Charter's FCC Forms 1240 were calculated in compliance with federal laws and regulations.² *See Exhs. 1-32.* As such, the

1 The true-up segment includes the compensation for overcharges or undercharges which have occurred during the True-Up Periods. The purpose of the true-up process is to compare the revenue a cable operator collected during the True-Up Period with the amount the operator should have been able to collect. If the sum collected is less than what should have been collected, then the operator is allowed to collect the difference during later rate periods. Conversely, if the sum collected exceeds the amount that should have been collected, then the operator must lower its rates in future rate periods to compensate subscribers for the difference. FCC, *Instructions for FCC Form 1240 Ann. Updating of Maximum Permitted Rates for Regulated Cable Servs.* at 5 (July 1996).

2 The MPRs which appear in Charter's 2019 Forms 1240 for Belchertown, Brimfield, Chicopee, Dalton, Easthampton, East Longmeadow, Hadley, Hampden, Lee, Lenox, Ludlow, Pittsfield, Richmond, Southampton, Stockbridge, Uxbridge, and Wilbraham differ from the MPRs contained in Charter's 2018 Forms 1240 for these communities as a result of changes required by the Department in last year's rate case. Specifically, the Department required Charter to adjust the MPRs included in its 2018 Forms 1240 for these communities by subtracting from those MPRs the residuals and any associated external costs associated with channels removed from some subscribers' programming as part of a required refund plan. *See Petition of Charter Commc'ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the cntys. in Mass. served by Charter Commc'ns that are currently subject to rate regulation*, D.T.C. 17-5, *Rate Order* at 18-20 (Oct. 31, 2018) ("17-5 Order"); *Charter Communications' Refund Plan*, D.T.C. 17-5 (Nov. 19, 2018) ("Refund Plan"); D.T.C. 17-5, *Order on Refund Plan* (Dec. 20, 2018). Charter has used the resulting, revised MPRs, rather than the MPRs which appeared in Charter's 2018 Forms 1240, in completing its 2019 Forms 1240 for these communities. The revised MPRs for these communities appear in the Rate Schedule included as Attachment 1 for reference. In addition, the Department allowed Charter to reduce the rates it reported on Worksheet 8 of its 2019 Forms 1240 for these communities to reflect any subscriber refunds provided pursuant to the Refund Plan for applicable months during the True-Up Period covered by the 2019 Forms 1240. *17-5 Order* at 19 n. 21.

proposed MPRs comply with federal laws and regulation, and are approved. *See* 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. § 76.922(a), 76.922(c). The Department also finds that the proposed OSR in each community does not exceed the approved MPR for each community. As such, the OSRs comply with federal laws and regulation and are therefore reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. § 76.922(a), 76.922(c). Accordingly, the Department approves Charter's FCC Forms 1240.

A. Review of the FCC Form 1205

In Charter's FCC Form 1205 for its fiscal year ending December 31, 2017, Charter proposed several adjustments to its MPRs and OSRs for equipment and installation. *See* Exh. 33. The Department analyzed Charter's proposed rate adjustments and accepts its FCC Form 1205 as filed. Charter's MPRs and OSRs for equipment and installations are in the Rate Schedule included as Attachment 1.

FCC Form 1205 establishes rates for installations and equipment based upon actual capital costs and expenses. FCC, *Form 1205 Instructions for Determining Costs of Regulated Cable Equip. & Installation* (July 1996); *see also* 47 U.S.C. § 543(b)(3). A cable operator prepares FCC Form 1205 on an annual basis using information from its previous fiscal year. FCC, *Form 1205 Instructions for Determining Costs of Regulated Cable Equip. & Installation* (July 1996). Subscriber charges established in an FCC Form 1205 may not exceed charges based on actual costs as determined in accordance with the FCC's regulations. *See* 47 C.F.R. § 76.923(a)(2). The equipment regulated using an FCC Form 1205 "consists of all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier." *Id.* § 76.923(a)(1). Such regulated equipment includes, but is not limited to, converter boxes and remote control units. *Id.* The cable operator bears the burden of proof to

demonstrate that its proposed rates for installations and equipment comply with Section 623 of the Communications Act and the FCC's regulations. *See* 47 U.S.C. § 543; *1993 FCC Rate Order*, 8 FCC Rcd. 5631, 5716-17; 47 C.F.R. § 76.937(a). The FCC found that placing the burden on the cable operator is appropriate because the cable operator "possesses the factual information necessary for such a demonstration." *1993 FCC Rate Order*, 8 FCC Rcd. at 5716-17. Thus, to meet its burden, the cable operator must provide factual information demonstrating that its rates comply with the Communications Act and FCC regulations. *See id.*; 47 C.F.R. §§ 76.937(a), (d), 76.939. In reviewing regulated equipment and installation rates, the Department in its role as certified franchising authority must make a determination as to whether the cable operator met its burden, as well as whether the rates are reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. §§ 76.933, 76.937(d); 207 C.M.R. § 6.02.

After review and investigation, the Department determines that the data on Charter's FCC Form 1205 were calculated in compliance with federal laws and regulations. *See* Exh. 33. The Department approves Charter's proposed equipment and installation MPRs. The Department also finds that Charter's proposed equipment and installation OSRs do not exceed the approved MPRs. *See id.* As such, the proposed OSRs comply with federal laws and regulations and are reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. § 76.923(a)(2). Accordingly, the Department approves Charter's FCC Form 1205.

III. ORDER

After due notice, hearing, and consideration, it is

ORDERED: That Charter's proposed programming rates and FCC Forms 1240, as filed on November 1, 2018, are APPROVED; and it is

FURTHER ORDERED: That Charter's FCC Form 1205, as filed on November 1, 2018,
is APPROVED.

By Order of the Department,



Karen Charles Peterson
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.

ATTACHMENT 1

BASIC SERVICE TIER PROGRAMMING RATES

Community	Maximum Permitted Rate 2018	Approved Maximum Permitted Rate 2019	Operator Selected Rate Effective February 2019
Legacy Charter Regulated Communities			
Belchertown	\$20.15*	\$22.97	\$22.50
Brimfield	\$23.63*	\$26.49	\$26.00
Chicopee	\$23.95*	\$27.18	\$27.00
East Longmeadow	\$23.64*	\$26.93	\$25.50
Easthampton	\$21.32*	\$24.55	\$24.50
Hadley	\$19.47*	\$22.86	\$22.50
Hampden	\$23.79*	\$26.77	\$26.50
Harvard	\$21.98	\$22.72	\$22.55
Holden	\$21.88	\$21.45	\$21.05
Ludlow	\$25.20*	\$28.05	\$28.00
Paxton	\$21.87	\$21.15	\$21.05
Southampton	\$21.86*	\$24.63	\$24.50
Spencer	\$28.57	\$28.80	\$27.50
Sturbridge	\$27.36	\$28.62	\$27.00
West Boylston	\$22.22	\$22.02	\$21.55
Wilbraham	\$25.42*	\$28.37	\$28.00
Legacy Charter 10 Recertified Regulated Communities			
Auburn	\$18.67	\$22.47	\$22.05
Brookfield	\$22.85	\$26.86	\$25.50
Charlton	\$22.69	\$27.15	\$25.50
Dudley	\$24.19	\$28.72	\$27.00
East Brookfield	\$22.92	\$27.03	\$25.50
Pepperell	\$19.22	\$23.10	\$23.05
Upton	\$19.87	\$23.57	\$23.55
Uxbridge	\$18.92*	\$22.19	\$22.05
West Brookfield	\$31.75	\$35.73	\$34.00
Worcester	\$20.40	\$23.99	\$23.55
Legacy TWC Regulated Communities			
Lee	\$32.95*	\$33.97	\$30.00
Lenox	\$32.95*	\$33.97	\$30.00
Stockbridge	\$32.95*	\$33.97	\$30.00

Dalton	\$42.80*	\$43.72	\$30.00
Pittsfield	\$42.80*	\$43.72	\$30.00
Richmond	\$42.80*	\$43.72	\$30.00

*The rates reflect the MPRs revised under the 2018 Refund Plan

REGULATED EQUIPMENT AND OTHER SERVICES RATES

	Approved Maximum Permitted Rate 2019	Operator Selected Rate Effective February 2019
Remote	\$0.13	\$0.12*
Standard Converter	\$0.80	\$0.69**
HD/DVR Converter	\$3.69	\$3.78**
Cable Card	\$1.10	\$1.00

*Included with converter

**Includes remote