

THE COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY  
CABLE TELEVISION DIVISION**

_____	)	Docket No. CTV 01-8	
	)	Date Issued: October 23, 2002	
	)		
Charter	)	Auburn, CUID MA 0073	North Brookfield, CUID MA 0308
Communications	)	Barre, CUID MA 0329	Northborough, CUID MA 0197
Entertainment I,	)	Belchertown, CUID MA 0286	Northbridge, CUID MA 0180
L.L.C.	)	Berlin, CUID MA 0333	Oakham, CUID MA 0344
	)	Boylston, CUID MA 0260	Oxford, CUID MA 0120
	)	Brookfield, CUID MA 0335	Paxton, CUID MA 0304
	)	Charlton, CUID MA 0309	Pepperell, CUID MA 0281
	)	Chicopee, CUID MA 0087	Rutland, CUID MA 0328
	)	Dudley, CUID MA 0036	Southampton, CUID MA 0184
	)	East Brookfield, CUID MA 0312	Southborough, CUID MA 0259
For a	)	East Longmeadow, CUID MA 0092	Southbridge, CUID MA 0029
Determination of	)	Easthampton, CUID MA 0107	Spencer, CUID MA 0043
Cable Television	)	Grafton, CUID MA 0177	Sturbridge, CUID MA 0209
Rates	)	Groton, CUID MA 0282	Sutton, CUID MA 0292
	)	Hadley, CUID MA 0285	Upton, CUID MA 0242
	)	Hampden, CUID MA 0103	Uxbridge, CUID MA 0290
	)	Harvard, CUID MA 0334	West Boylston, CUID MA 0319
	)	Hinsdale, CUID MA 0313	West Brookfield, CUID MA 0305
	)	Holden, CUID MA 0179	West Stockbridge, CUID MA 0311
	)	Hubbardston, CUID MA 0330	Westborough, CUID MA 0198
	)	Lanesborough, CUID MA 0300	Westport, CUID MA 0297
	)	Leicester, CUID MA 0044	Wilbraham, CUID MA 0054
	)	Ludlow, CUID MA 0081	Worcester, CUID MA 0018
_____	)	Millbury, CUID MA 0121	

**RATE ORDER**

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## I. INTRODUCTION

On November 1, 2001, Charter Communications Entertainment I, L.L.C. (“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 separate Federal Communications Commission (“FCC”) Form 1240s for 26 communities that had been served by Greater Media Cable.<sup>1</sup> Charter also filed its nationwide FCC Form 1205 for the year ending December 31, 2000, to establish equipment and installation rates for all 47 of its regulated Massachusetts communities.<sup>2</sup> Charter put its proposed BST programming rates and equipment rates into effect on February 1, 2002, and its proposed installation rates into effect on March 1, 2002.

The Cable Division held a public and evidentiary hearing on Charter’s proposed filings in Worcester on May 30, 2002. The Towns of Northborough, Southamptton, Spencer and Wilbraham intervened in this proceeding. The evidentiary record includes 27 Charter exhibits, 14 Cable Division exhibits consisting of Charter’s responses to our information requests, and responses to record requests posed by the Cable Division. No party filed a brief.

## II. STANDARD OF REVIEW AND BURDEN OF PROOF

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 Communications Act of 1934, as amended (the “Communications Act”). 47 C.F.R. §§ 76.922, 76.923, 76.930.

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 at 7, 12-13. 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 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).

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<sup>1</sup> These communities are: Auburn, Boylston, Chicopee, Dudley, East Longmeadow, Easthampton, Grafton, Hampden, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southamptton, Southborough, Southbridge, Spencer, Sturbridge, West Boylston, West Brookfield, Westborough, Wilbraham and Worcester. Charter did not file a FCC Form 1240 for the Town of Upton, since the rates in that town were established by a settlement agreement between the parties and approved by the Cable Division. Charter Communications Entertainment I, CHA Y-00, at 4-5 (2000).

<sup>2</sup> Six Charter communities have not requested rate regulation: Brimfield, Douglas, Dunstable, Millville, Wales and Webster.

The FCC Form 1240 allows a cable operator to annually update its basic service tier 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 FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A); 47 C.F.R. § 76.922(e)(iii)(2)(A). Although cable operators may project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable, 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 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 Communications Act. 47 C.F.R. § 76.922(a). The Cable Division may accept as in compliance with the statute basic service tier rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by 47 C.F.R. § 76.922(c), and may also 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. G.L. c. 166A, §§ 2, 15; 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 the basic service tier and accompanying equipment 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) (the "Rate Regulation, Report and Order") at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

### III. DISCUSSION AND ANALYSIS

#### A. Public, Educational and Governmental Access Payments

##### 1. Charter's Inclusion of Franchise Fees within the Maximum Permitted Rate

Charter originally reported that in Boylston, Grafton, Holden, Ludlow, Southborough and Worcester, it makes an annual PEG access payment that is calculated using a percentage of the annual gross revenue Charter receives in that community (Exhs. CTV-2, -3, -5, -7, -8, -10). Charter later refiled its response for Southborough, reporting that under the new license agreement, the Company pays an annual operating grant of \$25,000, instead of a fee based on

a percentage of revenue (Exh. CTV-8, revised). Charter also pays Southbridge an annual operating grant based on a percentage of gross revenue.<sup>3</sup> The FCC Form 1240s filed for Boylston, Grafton, Holden, Ludlow, Southborough, Southbridge and Worcester show that the Company has included these communities' PEG access payments as franchise related costs in its Worksheet 7 calculations (Exhs. Charter-2, - 7, -9, -11, -18, -19, -26). At issue is whether Charter properly included these payments on its FCC Form 1240s.

FCC Form 1240 requires operators to report their franchise related costs on the form (See Worksheet 7 – External Costs: True-Up Period and Worksheet 7 – External Costs: Projected Period, at Line 707, “Franchise Related Costs for Period”). Further, the FCC Form 1240 Instructions direct operators not to include franchise fees in the Worksheet 7 calculations of the franchise related costs for the period. FCC Form 1240 Instructions at 39, Line 707. The FCC's rate regulations provide that franchise fees are added on to the maximum monthly charge after the BST rate is calculated. 47 C.F.R. § 76.922(a). Similarly, changes in franchise fees are not included in the calculation of the rate, but are added back into the subscriber's maximum monthly charge rate after the benchmark rate is calculated. 47 C.F.R. § 76.922(f)(5). Thus, in order to determine whether or not the PEG access payments were properly included in Worksheet 7 on these FCC Form 1240s, we must determine whether or not these PEG access payments are categorized as franchise fees or franchise related costs.

The Cable Communications Policy Act of 1984 (the “1984 Cable Act”), Pub. L. No. 98-549 defines “PEG access payments” as “requirements imposed by the cable operator by the franchise agreement to support public, educational or governmental channels or the use of such channels.” 47 U.S.C. § 542(g)(1). Under federal law, not all PEG access payments are franchise fees. The 1984 Cable Act provided that for all new licenses executed after October 30, 1984, the term “franchise fee” would not include “capital costs” required by the franchise for PEG access facilities, but would include required “non-capital” PEG access costs. 47 U.S.C. § 542(g)(2)(C). The FCC has held that only monetary payments, whether they be defined as a percentage of gross annual revenue or established as a fixed amount, made by the cable operator to the community for PEG access expenses are franchise fees. City of Bowie, Maryland, 14 FCC Rcd 9596, DA 99-1252 (released June 25, 1999).

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<sup>3</sup> At the hearing, Charter testified that seven communities receive access payments based upon a percentage of gross revenue (Hearing Audiotape, Side B, at Counter No. 679). The Cable Division identified these seven communities by examining Charter's cable licenses on file with the Cable Division, pursuant to G.L. c. 166A, § 3. The Cable Division confirmed that the current cable licenses in Boylston, Grafton, Holden, Ludlow and Worcester calculate PEG access fees using a percentage of gross revenue, and that Southborough's does not. (See Boylston License at 20, Grafton License at 15-19, Holden License at 26-27, Ludlow License at 51, Southborough License at 19-20, and Worcester License at 44-46.) The two additional communities are Southbridge and Upton (Southbridge License at 49-50, and Upton License at 22-23). As noted above in footnote 1, Upton's BST rates are not under review in this proceeding.

After reviewing the licenses for these communities, the Cable Division determines that all seven cable licenses require direct monetary payments by Charter to the community or its designee to support PEG access. Therefore, Charter's PEG access expense payments to the communities of Boylston, Grafton, Holden, Ludlow, Southbridge and Worcester, calculated as a percentage of revenue, are franchise fees under federal law. The annual monetary payment in Southborough is also a franchise fee under federal law. Nevertheless, Charter included these payments within its rate calculations on Worksheet 7, Line 707, of the FCC Form 1240s filed for Boylston, Grafton, Holden, Ludlow, Southborough, Southbridge and Worcester, contrary to 47 C.F.R. §§ 76.922(a) and 76.922(f)(5). Accordingly, the Cable Division directs Charter to remove its entire franchise fee payments from the maximum permitted rates ("MPR") reported on the FCC Form 1240s filed for these communities. 47 C.F.R. § 76.922(f)(5). The Cable Division further directs Charter to examine the other 19 FCC Form 1240s filed for the remaining communities that are under review in this proceeding to determine if they contain any franchise fees included as franchise related costs, and if so, remove these franchise fees from the MPR. Charter is further directed to submit the revised FCC Form 1240s to the Cable Division, or where no revision is required, submit a statement confirming that no franchise fees were included in the rate calculation. Pursuant to 47 U.S.C. § 542(b) and 47 U.S.C. § 542(g)(2), Charter may pass through the costs of these PEG access payments to subscribers to the extent allowed under the license as a charge above the FCC Form 1240 rate. See Time Warner Cable, Y-97 INC at 16 (1998).<sup>4</sup>

2. Charter's Imposition of a Flat Franchise Fee on All Subscribers Within a Community

In those communities where the franchise fee is calculated as a percentage of gross annual revenues, Charter's practice is to bill every subscriber within the community an equal amount for the franchise fee, regardless of the amount of the total charges on the subscriber's bill (Hearing Audiotape, Side C, at Counter Nos. 42-250). The Company stated that the fee is charged equally to all subscribers because every subscriber receives the PEG access channels (id. at Counter No. 150). The Company compared the fee to a sewer bill, where everyone pays the same amount for the service, regardless of usage (id. at Counter No. 206). The issue is whether franchise fees that are calculated as a percentage of gross annual revenue are appropriately billed to subscribers as a fixed amount.

The 1992 Cable Act provides that the FCC shall ensure that the rates for the basic service tier are reasonable. 47 U.S.C. § 543(b)(1). The Cable Act specifies that in doing so, the FCC shall take into account, among other things, the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any

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<sup>4</sup> Charter may continue to include, on its FCC Form 1240s as franchise related costs, any annual operating expenses for PEG access, required by the cable license, that are not monetary payments to the community. Bowie Letter at 1-2.

State or local authority on any transactions between cable operators and cable subscribers. 47 U.S.C. § 543(b)(2)(C)(v). While there is no FCC regulation on point, the FCC has held that “because franchise fees may be assessed on a tier, subscriber or revenue sensitive basis, we require that franchise fees be allocated between tiers and subscribers in a manner reflective of the way they are assessed.” Rate Regulation, Report and Order at 5790, ¶ 254. The FCC stated its expectation that the franchise fees would be imposed as a percentage of the total bill:

[i]t is not possible to project the rate impact of an increase in franchise fees on particular subscribers because franchise fees are normally collected from cable subscribers by assessing a fixed percentage of their total bill, at the time they receive their bill. Therefore, the amount of franchise fees collected will differ among subscribers, depending upon the total bill of a particular subscriber.

Thirteenth Order on Reconsideration, in MM Docket No. 92-266, 11 FCC Rcd 388, at 440, ¶ 77 (1995). Thus, where the franchise fee is assessed on various tiers of service, as is the case with a percentage franchise fee, the payment of the fee should be allocated among levels of service on subscribers’ bills, based on the method of assessment.

In addition to FCC precedent, important policy considerations support this conclusion. By charging an equal amount of franchise fees to all subscribers, Charter unfairly discriminates against subscribers who take lower levels of service. As increasing numbers of customers subscribe to digital and other higher priced services, the total revenue subject to the percentage franchise fee increases as well. BST subscribers (as well as subscribers to other levels of service) would experience increases in their bills with no corresponding increases in the services they receive.

Charter’s argument that since the franchise fee payments support PEG access, all percentage franchise fees should be charged to the basic tier, is a faulty one. By agreeing to pay a percentage of gross revenue to support PEG access, the operator is not providing a specific amount to support access. Basically, the operator is agreeing that as the community’s subscribers increasingly purchase advanced cable services, PEG access payments to the community will also increase. This is, presumably, the expectation of the community when it includes in its license a franchise fee computed as a percentage of gross revenue. Therefore, PEG access payments are indelibly linked, not to the BST’s revenue, since all subscribers must take the BST, but instead, revenue from the non-regulated higher-level services. The Cable Division finds it incongruous that Charter’s total BST rate would depend upon the penetration level the Company achieves for its new advanced services.

Moreover, using its current methodology, Charter is required to recalculate its franchise fee payments annually, using the previous year’s gross revenues (Hearing Audiotape, Side C, at Counter No. 245). This method, however, results in an approximate amount being

collected. By assigning a franchise fee percentage to the subscriber's total charges on each bill, Charter would collect from subscribers the exact percentage of franchise fees specified by the license. Further, there would also be less subscriber confusion, because it would be clear to all subscribers that the franchise fee portion of the bill is a percentage of the entire bill.

Charter has presented no convincing argument that the allocation of franchise fee pass-through should be based on anything but the manner in which the fees are assessed. Given the FCC precedent and the unfair impact Charter's practice has on BST subscribers, the Cable Division rejects this practice. The Cable Division, therefore, directs Charter, in those communities where franchise fees are calculated as a percentage of gross revenue, to begin billing each subscriber for franchise fees as a percentage of the total of his or her individual bill.

3. Charter's Inclusion of 12 Months of Franchise Requirements On FCC Form 1240, Worksheet 7

Charter's filings for Auburn, Grafton, Holden, Leicester and Northbridge reflected an increase in the per-month franchise related costs contained in the true-up period calculation when compared with the previous form's projected period calculation (Exhs. Charter-1, -7, -9, -10, -14). The Company indicated that these communities' annual operating grants had been paid during the true-up period (Exhs. CTV-2, -5, -6). Charter explained that the reason for the per month increase in franchise related costs was that the current year's true-up period was only 11 months long, instead of 12 months (id.). Charter adjusted its true-up period because the Company changed its annual filing date from November 30 to November 1, and its annual rate change date from March 1 to February 1 (Charter Letter of November 1, 2001). The Company said that because the current filing's true-up period was only 11 months, the monthly cost was higher than during a 12-month projected period (id.). At the hearing, Charter suggested that if an annual franchise related cost payment were made during a true-up period, the entire annual amount should be included within that period, even if the true-up period were less than 12 months long (Hearing Audiotape, Side C, at Counter Nos. 412-418). The Company also stated that it did not have these costs available on a month-by-month basis (id. at Counter Nos. 371-375).

The FCC Form 1240 Instructions for Worksheet 7 - External Costs: True-Up Period, at Line 707, "Franchise Related Costs For the Period," begin: "[e]nter the total monthly franchise related costs for the period." FCC Form 1240 Instructions at 39, Line 707. This instruction indicates that the franchise related costs are to be calculated for each month of the true-up period, and then totaled on Line 707. This approach is necessary because franchise related costs may change during the middle of the true-up period. For instance, a new cable license may provide for a capital grant to be paid on a certain date. The amortization of this payment

should only be included as a franchise related cost for those months occurring after the payment was made.

Furthermore, Worksheet 7, Line 710, computes a monthly per-subscriber figure for external costs, on Line 710. This line adds up the external costs incurred by the cable operator during the true-up period, and then divides the total by the average subscribership for the projected period and the number of months in the true-up period. FCC Form 1240 Instructions at 40, Line 710. To include the franchise related costs amount accrued for a 12 month period on Worksheet 7, and then divide this amount by 11, results in the inclusion in the monthly external costs figure of a franchise related cost component that is too high by 1/12th, or by 9.1 percent.

To illustrate this point, we review the Southbridge filing. On Southbridge's prior FCC Form 1240, the 12-month projected period had annual franchise related costs of \$50,864, which the Company reported were \$4,239 per month ( $\$50,864/12$  months) (Exh. CTV-2). On Southbridge's current FCC Form 1240, during the true-up period, franchise related costs were reduced to \$40,261, due to a decrease in annual operating expenses and a smaller capital grant under the new license (id., see Exh. Charter-19). The Company did not allege that any reduction in annual costs was the result of an adjustment for the shorter true-up period. However, Charter divided its total annual cost figure by 11 months to calculate a per month cost of \$3,660 (Exh. CTV-2). Charter should have divided \$40,261 by 12, resulting in the correct monthly cost figure of \$3,355. Charter's monthly cost figure exceeds the correct monthly external cost figure by 9.1 percent.<sup>5</sup>

The purpose of the true-up methodology is to compare the revenue the operator actually collected during the true-up period, with the revenue the cable operator should have been able to collect. FCC Form 1240 Instructions at 5. This comparison requires the cable operator to compute what the monthly rate should have been, using the true-up period data. FCC Form 1240, at 3-4, Modules F and H. If the cable operator inflates the external cost amount, the true-up adjustment will be increased, and consequently the subscriber's monthly rate will also be increased. Id. at Lines F7, Lines H1 through H3, Lines H12 through H14, Line I8. Because Charter has inflated its monthly franchise related cost amounts by 1/12th, the Company's proposed monthly rates are unreasonable.

We direct Charter to recalculate its franchise related costs on Worksheet 7, True-Up Period, Line 707, of its FCC Form 1240s, by including only 11 months of its annual franchise related costs, and to submit the revised forms to the Cable Division. Since these changes do not correct for erroneous projections but, rather, they correct for errors relating to the calculation of actual data, they cannot be reconciled on the next filings. Therefore, we further

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<sup>5</sup> Even though Southbridge's monthly rate was decreased, the methodology employed by Charter results in a smaller decrease than would have resulted if it had used the proper methodology.

direct Charter to prepare and file a refund plan for its overcharges, calculating the per-subscriber refund for each community. The refund plan must address overcharges commencing on February 1, 2002, the date the BST rates currently under review became effective.

B. FCC Form 1205

1. The Basic-Only Converter Rate

The Telecommunications Act of 1996 allowed cable operators to aggregate their equipment costs into broad categories, regardless of the varying levels of functionality of the equipment, on a franchise, system, regional or company level. 47 U.S.C. § 543(a)(7)(A). However, the Act specifically provided that “[s]uch aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.” Congress specifically directed the FCC to implement this requirement in a rule. 47 U.S.C. § 543(a)(7)(B). Accordingly, the FCC’s rate regulations now provide that the costs of customer equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic-only subscribers, although such costs may be aggregated on a franchise, system, regional or company level. 47 C.F.R. § 76.923(c)(2).

Charter did not propose a converter rate for basic-only customers. When the Cable Division requested Charter to calculate such a rate, Charter responded that when it purchased Greater Media Cable and ten other acquisitions in 1999, the records did not contain asset information at a level that would allow the Company to calculate a basic-only rate (RR-CTV-4). The Company indicated that it does not require the use of basic-only converters, and that most of its basic-only customers do not request them (*id.*). Charter stated that “... [t]he Company has continued to maintain a low \$1.15 actual rate for non-addressable converters” (*id.*).

In adopting its applicable regulation, the FCC stated” [w]e conclude that Congress intended to ensure that basic-only subscribers not bear the costs of equipment used by subscribers taking services in addition to basic.” Implementation of Section 301(j) of the Telecommunications Act of 1996: Aggregation of Equipment Costs by Cable Operators, 11 FCC Rcd 6778, FCC 96-257, at 6789, ¶ 23 (released June 7, 1996). Since 1996, the widespread introduction of expensive equipment required to receive digital services has resulted in increases in equipment rates. While the Cable Division understands that Charter has maintained its basic-only rate of \$1.15 for its non-addressable converters, given the age of many non-addressable units, Charter must provide updated basic-only equipment calculation justifying this rate on the same national level, in compliance with the statute and regulations. Accordingly, we direct Charter, on its next annual FCC Form 1205, to include the calculation of an MPR for basic-only converters.

## 2. The Home Wiring Maintenance Charge

In Charter Communications Entertainment I, L.L.C., CTV 01-2, at 6-8, 10 (2002), the Cable Division approved Charter's home wiring maintenance charge based on an off-form calculation. However, the Cable Division specifically stated that such a presentation was not usual, but would be accepted in that one instance. Id. at 7. The Cable Division further directed Charter, in future rate proceedings, to provide FCC Form 1205 filings that include home wiring maintenance justifications in Schedule C and Step E, and include only those subscribers that have a home wiring charge. Id.

In this proceeding, Charter submitted an FCC Form 1205 for review and included a home wiring maintenance charge as "other leased equipment" (Exh. Charter-27). Apparently, Charter complied with a literal interpretation of our previous directive, since apart from completing the "Other Equip." column on Schedule C, an adjustment to the "Grand Total" on Schedule C, Line L, and the completion of Step E, "Charges for Other Leased Equipment," (id. at 3, 5), the information provided on this FCC form 1205 is identical to the data approved in CTV 01-2.

The Company's calculation resulted in a home wiring maintenance charge that is \$0.02 less than the charge deemed reasonable in CTV 01-2. We therefore approve the rate proposed in this matter. However, Charter must, in future filings, present a justification on its FCC Form 1205 for any home wiring maintenance charge. The calculation of this home wiring maintenance charge shall be reflected in all applicable sections of the form.<sup>6</sup>

## IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby rejects Charter's FCC Form 1240s as filed on November 1, 2001, for Auburn, Boylston, Chicopee, Dudley, East Longmeadow, Easthampton, Grafton, Hampden, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southampton, Southborough, Southbridge, Spencer, Sturbridge, West Boylston, West Brookfield, Westborough, Wilbraham and Worcester. The Cable Division also hereby rejects Charter's revised FCC Form 1240s as submitted on May 24, 2002 for Boylston, Holden and Southborough.

Further, upon due notice, hearing and consideration, the Cable Division hereby approves Charter's FCC Form 1205 as filed on November 1, 2001, for Auburn, Barre, Belchertown, Berlin, Boylston, Brookfield, Charlton, Chicopee, Dudley, East Brookfield, East Longmeadow, Easthampton, Grafton, Groton, Hadley, Hampden, Harvard, Hinsdale, Holden,

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<sup>6</sup> For example, the proposed home wiring maintenance charge may affect the calculation of Schedule B, "Annual Operating Expenses for Service, Installation and Maintenance of Equipment."

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 hereby directs Charter to refile its FCC Form 1240s for the above communities in accordance with this Rate Order, and to file a refund plan for its BST overcharges resulting from its treatment of franchise related costs in its true-up calculations, on or before November 6, 2002.

The Cable Division hereby further directs Charter to begin billing each subscriber for franchise fees calculated as a percentage of gross revenue, as a percentage of the total of his or her individual bill, commencing with the first billing cycle for which this change can be implemented.

The Cable Division directs Charter to comply with all other directives contained in this Order.

**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. 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.