THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION

	)	Docket No. Y-98 INC, Y-98 EQU	
In the Matter of	)	Date Issued: January 20, 1999	
	)		
Adelphia Cable	)	Adams, CUID MA 0001	Gay Head, CUID MA 0275
Communications	)	Cheshire, CUID MA 0002	Kingston, CUID MA 0159
	)	Clarksburg, CUID MA 0003	Marshfield, CUID MA 0191
For a Determination	)	Duxbury, CUID MA 0302	North Adams, CUID MA 0004
of	)	Edgartown, CUID MA 0273	Oak Bluffs, CUID MA 0272
Cable Television Rates	)	Falmouth, CUID MA 0072	Plymouth, CUID MA 0123

RATE ORDER

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I. INTRODUCTION

On May 1, 1998, Adelphia Cable Communications ("Adelphia" or "the Company")[1] filed with the Cable Television Division ("Cable Division")[2] of the Department of Telecommunications and Energy, for each of the above-captioned communities, proposed basic service tier ("BST") programming rates on Federal Communications Commission ("FCC") Form 1240s[3] and proposed equipment and installation rates on FCC Form 1205s.[4] On May 18, 1998, Adelphia filed revised FCC Form 1240s for the Towns of Kingston and Plymouth, in order to include certain franchise related costs. Pursuant to 47 C.F.R. § 76.933(g), Adelphia put these proposed programming and equipment rates into effect on August 1, 1998. In addition, on May 1, 1998, Adelphia filed an FCC Form 1235, the "Abbreviated Cost of Service Filing for Cable Network Upgrades," for the Town of Duxbury.[5]

The Cable Division held public hearings on Adelphia's pending filings in Boston on August 18, 1998 and in North Adams on August 19, 1998. The Town of Falmouth and the City of North Adams intervened in this proceeding.

The Cable Division's information requests CATV 1 through CATV 17 were issued on August 13, 1998. At the August 18, 1998 public hearing, additional information requests were

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1 Adelphia operates its cable systems under the following entities: Adelphia Cablevision Associates, L.P. in Falmouth; Campbell Communications, Inc. in Carver, Duxbury, Kingston and Plymouth; Martha's Vineyard Cablevision, Inc. in Chilmark, Edgartown, Gay Head, Oak Bluffs, Tisbury and West Tisbury; Mountain Cable Company in Adams, Cheshire, Clarksburg, North Adams and Williamstown; and South Shore Cablevision, Inc. in Marshfield. The Towns of Carver, Chilmark, Tisbury, West Tisbury and Williamstown have not requested rate regulation. On August 5, 1998, the Town of Gay Head officially changed its name to the Town of Aquinnah.

2 Formally, "division of community antenna television" under G.L. c. 166A, § 2. It was previously named the "community antenna television commission" under G.L. c. 166A, § 2 before it was merged into the Department of Telecommunications and Energy, effective November 25, 1997.

3 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. Adelphia filed combined FCC Form 1240s for its Berkshire County system and its Martha's Vineyard system, and separate FCC Form 1240s for Duxbury, Falmouth, Kingston, Marshfield and Plymouth.

4 The FCC Form 1205 allows a cable operator to annually adjust its costs of regulated cable equipment and installation. Pursuant to the FCC's rate regulations at 47 C.F.R. § 76.923(n)(3), the FCC Form 1205 is filed on the same date the cable operator files its FCC Form 1240. Adelphia filed two combined FCC Form 1205s, one for its Berkshire County system, and the other for its eastern Massachusetts and Martha's Vineyard systems.

5 The FCC Form 1235 is filed to permit "cable operators to justify rate increases related to significant capital expenditures used to improve rate-regulated cable services." FCC Form 1235, Instructions for Completion of Abbreviated Cost of Service Filing for Cable Network Upgrades (February 1996) at 1.

made by Intervenor Falmouth, numbered CATV 18, and by the Cable Division, numbered CATV 19. Adelphia responded to these information requests on August 17, 1998, August 31, 1998 and October 2, 1998. As noticed, the Cable Division admits Adelphia's written responses to these requests into the record of the proceeding as record requests (herein cited as RR-CATV-1 through RR-CATV-19). The Cable Division issued its briefing schedule on September 4, 1998. The Cable Division received Adelphia's brief on September 18, 1998, and North Adams's brief on September 23, 1998. On November 5, 1998, the Cable Division sent a supplemental record request, RR-CATV-20, to which Adelphia responded on November 17, 1998.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

The standard under which the Cable Division must review rate adjustments on FCC rate forms reflecting inflation, changes in external costs or changes in the number of regulated channels is found in the FCC's rate regulations. Specifically, the regulations provide that the rate regulator shall ensure that the rates comply with the requirements of 47 U.S.C. § 543. 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 charges that are calculated in accordance with 47 C.F.R. § 76.923. Filings on FCC Form 1235 must satisfy the network upgrade rate increase standards of 47 C.F.R. § 76.922(j), which incorporate the cost assignment and allocation requirements of 47 C.F.R. § 76.924. In addition, the Cable Division may approve rates it deems reasonable. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates comply with the federal regulations, the burden of proof is on the cable operator to demonstrate that its initial rates for the basic service tier and accompanying equipment, or proposed increases in these rates, 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) ¶ 129; see also 47 C.F.R. § 76.937(a). 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)(ii)(A); 47 C.F.R. § 76.922(e)(iii)(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)(ii)(A). With respect to equipment, subscriber charges shall not exceed charges based on actual cost determined in accordance with the requirements of 47 C.F.R. § 76.923. 47 C.F.R. § 76.923(a)(2). Accordingly, the Cable Division must determine that upon a showing by Adelphia, the rates are in compliance with 47 U.S.C. § 543 and §§ 76.922 and 76.923.

III. DISCUSSION AND ANALYSIS

Generally, the Cable Division finds that the Company's FCC Form 1205s and 1240s comply with the applicable federal regulations. However, for certain communities, the Company's FCC Form 1235 or FCC Form 1240 does not comply with the regulations. In this section, the Cable Division addresses several issues that were raised during the course of the proceeding. Specifically, we address cost allocations and the revenue offset requirement on the Duxbury FCC Form 1235, the inclusion of rebuild costs on the Duxbury FCC Form 1240, the adjustment of external costs on the Kingston FCC Form 1240, franchise related costs in North Adams, and interest on unclaimed true-up and basic-only converter rates in all communities.

A. Cost Allocations on the Duxbury FCC Form 1235

Adelphia is in the process of upgrading its cable system in Duxbury from 450 Megahertz ("MHz") to 750 MHz, pursuant to its license (Adelphia Brief at 3; RR-CATV-12; Exh. 4, FCC Form 1235, Exh. II). Adelphia filed its Duxbury FCC Form 1235 pursuant to the form's instructions, which provide that "this form can be filed for pre-approval any time prior to the upgrade services becoming available to subscribers using projected upgrade costs." FCC Form 1235, Instructions for Completion of Abbreviated Cost of Service Filing for Cable Network Upgrades (February 1996) ("FCC Form 1235 Instructions") at 2. Adelphia is, therefore, seeking to obtain the Cable Division's approval of an initial Duxbury FCC Form 1235 and the BST rate proposed therein before the upgraded system is activated. The FCC Form 1235 Instructions state that "[t]he network upgrade add-on, however, cannot be charged to subscribers until upgraded cable services become available and are providing benefits to customers of rate-regulated services." Id. On its FCC Form 1235, Adelphia reported that the Duxbury rebuild will become effective on February 1, 1999 (RR-CATV-16, revised).[6]

The FCC Form 1235 Instructions also require that Adelphia refile the form, substituting actual costs for projected costs, "following the end of the month in which upgraded cable services become available and are providing benefits to all customers of rate-regulated services...." FCC Form 1235 Instructions at 2. Thus, the Cable Division must review Duxbury's final FCC Form 1235 for Duxbury.

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6 Adelphia filed an original and two revised versions of its Duxbury FCC Form 1235. The original FCC Form 1235 filing was admitted as part of Exhibit 4. Unless otherwise noticed, all citations are to the final version, filed on October 2, 1998 as RR-CATV-16, revised. The revised FCC Form 1235 made two tax adjustments to the original filing. First, on its initial FCC Form 1235, at page 3, Part II, Line 3(b), Adelphia reported a Massachusetts state income tax rate of 12.25% instead of the actual tax rate of 9.5%. Adelphia indicated that this was an error and made the appropriate correction. Second, on its May 1, 1998 FCC Form 1235 at page 3, Part II, Line 3(h), Adelphia erroneously calculated the tax gross-up factor. The Cable Division initially questioned whether Adelphia should take into account the deductibility of state taxes for federal tax purposes, citing the FCC's Cox Communications, Chula Vista, Erratum to DA 96-2070 (released December 23, 1996). After reviewing this erratum, Adelphia revised the tax gross-up calculation.

Two questions have arisen concerning Adelphia's allocation of the rebuild costs among the various tiers of cable service. According to Adelphia, the rebuild will expand Adelphia's Duxbury system to 78 analog channels and 200 MHz of digital capacity (Exh. 4, FCC Form 1235, Exh. II). In its FCC Form 1235 submission for Duxbury, Adelphia allocated 100% of the rebuild costs among the 78 post-rebuild analog channels (RR-CATV-16, revised, at 7).[7] The costs were allocated using the percentage of these 78 channels that will be carried on each tier of service - BST, the cable programming services tier ("CPST") and non-regulated services (id.). The first question is whether any rebuild costs should be allocated to the BST, since no additional channels will be added to the BST because of the rebuild (id.). The second question is whether 100% of the costs should be allocated to the 78 channels, or whether some percentage of the costs should be allocated to the additional 200 MHz of digital capacity, including any unused capacity.

With respect to the first question, Adelphia has stated that it is appropriate to allocate costs of its Duxbury rebuild to the BST, even though no additional channels will be added to the BST (RR-CATV-14). In support, the Company mentioned three improvements which would be experienced by BST subscribers: "(1) increase in plant reliability, (2) improved picture quality and (3) the availability of additional services to the customer (digital, power link [Internet service] and expanded pay per view options)" (id.). This position was not challenged by any Intervenor. The Cable Division notes that a similar allocation was approved by the FCC in Cox Communications San Diego, Inc., Chula Vista, DA 98-1536 (released August 4, 1998) ("Chula Vista"). The City of Chula Vista had denied Cox any recovery on the BST for upgrade costs shown on its FCC Form 1235. Id. ¶ 4. The FCC ruled otherwise: "[s]ubscribers are presumed to benefit from improved service quality and reliability when an operator meets the minimum technical specifications [of FCC Form 1235], and no showing of additional channels of service is required. The City's conclusion that there is no subscriber benefit because Cox did not add channels to the BST is inconsistent with the showing specified in FCC Form 1235 and is not reasonable." Id. ¶ 9. Adelphia has certified on its FCC Form 1235 that the Duxbury rebuild will satisfy the FCC's pertinent minimum technical standards (RR-CATV-16, revised at 2). Therefore, the Cable Division concludes that it would be appropriate for Adelphia to allocate a portion of its rebuild costs to the BST.

The second question concerns Adelphia's allocation of 100% of the rebuild's costs among the 78 analog channels (RR-CATV-16, revised at 7). Adelphia reports it "will not use all of the capacity of the rebuilt system initially" (Adelphia Brief at 5; RR-CATV-12). Instead, although "Adelphia will offer many more programming channels than it presently offers, it is only planning initially to use 27% of the 200 MHz of digital capacity on the rebuilt system. This is, of course, because digital channel transmission enables a cable operator to transmit several programming sources in the same space as one analog channel" (Adelphia Brief at 5, n.4). It appears that the

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7 On its May 1, 1998 FCC Form 1235, Adelphia used 72 channels as the total number of post-rebuild channels, at Worksheet B (Exh. 4). In reviewing back-up materials associated with the filing, the Cable Division determined that there would actually be 78 channels activated when the system upgrade was complete. Adelphia has acknowledged that the proper number is 78, and has revised its Worksheet B accordingly (RR-CATV-16, revised).

78 analog channels that will be carried by the rebuilt system will all be carried on the first 550 MHz of that system (RR-CATV-11; RR-CATV-16, revised; Exh. 4, FCC Form 1235, Exh. II).

Adelphia makes two major arguments supporting its proposed 100% allocation. First, it suggests that these upgrade costs should all be included since the upgrade is due to a franchise requirement (Adelphia Brief at 3; RR-CATV-13). The Company argues that had Duxbury not required an upgrade to 750 MHz, Adelphia would have only upgraded the system to 550 MHz at this time (Adelphia Brief at 4-5). It states that its situation in Duxbury is no different from the treatment of external costs pursuant to FCC Form 1240, wherein the cost of excess capacity is not excluded (id. at 5, 6). According to Adelphia, "[w]here such costs consist of capital outlays mandated by the franchise, the FCC has never held that the cost of any unused portion of such facilities cannot be claimed on a Form 1240" (id. at 6).

The Cable Division has reviewed the relevant FCC precedent, and has concluded that the FCC Form 1240 external costs analogy does not apply for the following reasons. The FCC deliberately chose to adopt an abbreviated cost-of-service approach for network upgrades, and specifically rejected the approach of passing through the cost of system upgrades as external costs. Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 93-215, CS Docket No. 94-28, FCC 94-39, 9 FCC Rcd 4527 ("Cost Order") (released March 30, 1994) at 4672-4676. The FCC stated that the abbreviated cost of service option "will be available only for significant upgrades requiring added capital investment, such as expansion of band width [sic] capacity and conversion to fiber optics, and for system rebuilds. Normal improvements and expansions of service will remain subject to the normal rate review process." Id. at 4675. In the Cost Order, the FCC specifically delegated authority to the Cable Services Bureau to develop an abbreviated cost-of-service form, now FCC Form 1235. See Cost Order at 4676; Public Notice, Cable Services Bureau Develops System Upgrade Form, 11 FCC Rcd 5554 (Cab. Serv. Bur. 1995). The Cable Division concludes that it was the FCC's intent to establish rate rules for a system rebuild that diverge from the traditional rules governing treatment of an external cost increase on FCC Form 1240. Thus, Adelphia's first argument for a 100% allocation cannot be supported.

Second, Adelphia argues that without the Duxbury license requirement, the Company would not have upgraded its Duxbury system to 750 MHz, but only to 550 MHz (Adelphia Brief at 4-5). The Company states: "[i]t would be unfair to Adelphia to require it to build a system beyond the capacity it will need for the foreseeable future and yet deny it the ability to recover the cost of that excess capacity over the life of the system" (id. at 5). However, neither the FCC Form 1235 nor the instructions to this form distinguish between upgrades required by an issuing authority pursuant to a license renewal, and upgrades voluntarily undertaken by a cable operator. The Cost Order also does not make this distinction. See Cost Order at 4672-4676.

Alternatively, Adelphia argues that if the Cable Division does not allow the Company to include the entire cost of the 750 MHz in the rate base, the Company should be permitted to include the capital cost of a rebuild to 550 MHz (Adelphia Brief at 6). However, an incremental or marginal cost approach has not been adopted by the FCC, which instead follows a fully distributed costing approach for cost-of-service proceedings. Cost Order at 4635. "The goal of cost allocation regulation is to provide a fully distributed costing methodology that emphasizes direct assignment and cost causation principles in assigning costs to the various services offered." (Emphasis added.) Id. A fully distributed costing methodology is incorporated into the FCC's cost allocation rate regulations at 47 C.F.R. § 76.924, which is applicable to FCC Form 1235 filings pursuant to 47 C.F.R. § 76.922(j)(4).

Having concluded that Adelphia's position in support of a 100% cost allocation cannot be sustained under the FCC's rate regulations and the instructions to FCC Form 1235, we now determine how the costs of the Duxbury rebuild should be allocated to the BST under the FCC's rate regulations and forms. The FCC Public Notice accompanying the release of FCC Form 1235 states: "[f]or a cable operator to receive such rate increases [on FCC Form 1235], the Commission requires ... (5) that the operator allocate its costs to ensure that only costs allocable to subscribers of regulated services are imposed upon them." Public Notice, OMB Approves FCC Form 1235, CS 96-11 (released February 27, 1996) at 1.

These directions conform with the language of the FCC in its final Cost-of-Service Order, Second Report and Order, First Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 93-215, CS Docket No. 94-28, FCC 95-502, 11 FCC Rcd 2220 ("Final Cost Order") (released January 26, 1996). The FCC stated therein:

> In response to Continental's request, we clarify that used and useful plant is plant that is actually used to send signals to customers. Plant which is not currently used and useful, however, is excess capacity, and operators may include this excess capacity in the ratebase only if it is fully constructed plant that will be used to provide regulated service within 12 months. ...
>
> The Commission also clarifies that plant in service must be allocated between regulated and unregulated services based on a reasonable measure of the current usage of that plant. Section 76.922(g)(6)(i) of our rules currently uses the phrase "used and useful in the provision of cable services," but does not specify that such cable services must be regulated cable services. Since our authority to determine cable rates extends only to regulated services as defined by the Communications Act, only plant used and useful in the provision of regulated services should be included in the ratebase.

Id. at 2235-2236.

The Final Cost Order thus establishes a two step process. First, only "used and useful" plant may be allocated; excess plant capacity, such as the portion of a rebuild's bandwidth that will not be used to provide any services within 12 months, cannot be included in the rate base as "plant in service." Second, once the plant in service is determined, its must be separated into its regulated and unregulated components, and only that portion used for regulated services can be included in the rate base, and allocated between BST and CPST services.

Significantly, this process was followed by Cox Communications, Inc. in Chula Vista, California. Chula Vista ¶ 12. As the FCC explained: "Cox allocated its plant and related costs to regulated services, including BST, in two steps. ... Because it did not activate 200 MHz of the 750 MHz of capacity it constructed, Cox subtracted 27% of its costs. Cox then allocated the residual 73% of its costs among regulated and unregulated services on the basis of the total channel count by tier after the upgrade. Because 18 of the 74 activated channels were in the BST, Cox allocated 24.32% of the residual costs to the BST." Id. ¶ 12. The FCC specifically approved Cox's allocations: "[t]he methodology Cox used in allocating costs to used and useful plant and to regulated tiers is consistent with the methodology the Commission described for measuring excess capacity and for reasonably measuring the current usage of tangible plant in the Final Cost Order and with the methodology applied in Bresnan Communications Co. [DA 97-2033 (released September 22, 1997) ¶ 28]." Id. ¶ 15.

We conclude that the Chula Vista precedent is applicable to Adelphia's proposed allocation method as shown on its FCC Form 1235 for Duxbury. Adelphia has admitted that "it is only planning initially to use 27% [or 54 MHz] of the 200 MHz of digital capacity on the rebuilt system" (Adelphia Brief at 5, n.4; RR-CATV-12). This digital capacity consists of the bandwidth between 550 MHz and 750 MHz. Accordingly, of the 750 MHz in Adelphia's rebuild, 73%, or 146 MHz, are not "used and useful" unless Adelphia is planning to activate them within the next 12 months. Therefore, Adelphia must subtract out 146/750 or 19.47% of its rebuild costs.

As for the remaining 80.53% of the costs that can be allocated between regulated and unregulated services, the 54 MHz of the 200 MHz digital capacity Adelphia proposes to activate is not included within its 78 analog channels of regulated and unregulated service (RR-CATV-11; RR-CATV-16, revised at 7.) The 78 analog channels will only be carried by the rebuilt system's first 550 MHz. Accordingly, the 80.53% of the total rebuild that is used and useful must be reduced by these 54 MHz, i.e., by 54/750 or 7.20%, to 73.33%. This remaining 73.33% of the total rebuild must be allocated among the 78 channels of regulated and unregulated services. Because only 25 of the 78 channels are on the BST, the fraction of the total rebuild properly allocated to the BST will be 25/78 of 73.33%, or 23.50%.

Based on our analysis, the Cable Division will not approve the pre-filed FCC Form 1235 as filed. We therefore direct Adelphia to make its rebuild allocation consistent with this Order on the final FCC Form 1235 that will be filed following the activation of the rebuild. Because the rebuild is expected to be completed within a few months, it is not necessary for Adelphia to revise its pre-filed FCC Form 1235.

B. Revenue Offset Requirement: Duxbury FCC Form 1235

The Cable Division raised a revenue offset issue with respect to the Duxbury FCC Form 1235 (Briefing Schedule at 1). Specifically, we asked Adelphia to provide its legal position on whether it is required to offset its expenses by any revenues generated, including revenues from leased access, advertising and home shopping. Adelphia responded that it does not contest the requirement that it factor its proposed revenues into the FCC Form 1235 rate calculation, and will do so in its final FCC Form 1235 submission (Adelphia Brief at 3). The Cable Division will review the final FCC Form 1235 to ensure compliance with the offset requirement.

C. The Duxbury FCC Form 1240s

Adelphia initially filed two Duxbury FCC Form 1240s on May 1, 1998. The first, dated April 25, 1998, did not include any costs related to the rebuild. The second, dated April 30, 1998, was described as an "upgrade filing," and did include the costs of the rebuild as the "Headend Upgrade Segment for Projected Period" of $2.90 on Module I, Line I6. This "upgrade filing" FCC Form 1240, which also included the rebuild costs, was refiled on October 2, 1998 (RR-CATV-16, revised).

Adelphia may report the rebuild on FCC Form 1240, Line I6 only if the Duxbury system is a small system. FCC Form 1240, Instructions (January 1996) at 21, Line I6; 34, Worksheet 6. The Instructions for Line I6 state: "For each tier, enter the average rate you will be allowed to charge for the small system headend upgrade adjustments...." (Emphasis added.) Id. at 21, Line I6. However, Adelphia has not established on this record that it has small system status in Duxbury. Therefore, the rebuild cannot be reported on FCC Form 1240, Line I6. Instead, Adelphia can report the rebuild only on FCC Form 1235, where a "Monthly Network Upgrade Add-on" is calculated at Part III, Line 4 (RR-CATV-16, revised at 3).[8] After the Cable Division receives and approves Adelphia's final revised FCC Form 1235 for Duxbury, this Monthly Network Upgrade Add-on may be legally charged to Duxbury subscribers in addition to the maximum permitted rate established by an FCC Form 1240 which does not include the rebuild. See FCC Form 1235 Instructions at 1.

Accordingly, the Cable Division will approve, as filed, the Duxbury FCC Form 1240 dated April 25, 1998, which does not include the costs of the rebuild. The Cable Division declines to approve the Duxbury FCC Form 1240 "upgrade filings," because they improperly include the upgrade costs. Additionally, in accordance with this Rate Order, Adelphia's next annual Duxbury FCC Form 1240 should not include costs related to the rebuild.

D. The Kingston FCC Form 1240: External Costs Adjustment

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8 Adelphia did compute a "Monthly Network Upgrade Add-on" on its Duxbury FCC Form 1235 filing (RR-CATV-16, revised at 3). The add-on calculated therein was reported on FCC Form 1240 at Line I6 as the "Headend Upgrade Segment for Projected Period."

The revised FCC Form 1240 filed for Kingston on May 15, 1998 included external costs of $0.6305 on Module D, Line D2. This number is supposed to have been carried over directly from Module I, Line I7 of the previous FCC Form 1240. FCC Form 1240, Instructions (January 1996) at 14, Line D2. However, the external costs number used in Line I7, Module I of the previous FCC Form 1240 is $0.7082. Kingston, FCC Form 1240 (filed May 5, 1997) at 4, Line I7. This FCC Form 1240 filing was approved by the Cable Division in Adelphia Cable Communications, Adams Y-97 et al, (issued August 6, 1997) at 2. Adelphia acknowledged that the $0.7082 should in fact be the number used, but did not file a further revised FCC Form 1240 for Kingston (CATV-RR-6). Accordingly, the Cable Division directs Adelphia to refile its FCC Form 1240 for Kingston with this correction. We note that this reduction will have no impact on the actual BST rate charged in Kingston, because this change only reduces the maximum permitted rate from $13.92 to $13.76, whereas Adelphia's operator selected rate is $12.65.

E. North Adams: Franchise Related Costs

Intervenor North Adams raised the issue whether Adelphia is passing through to subscribers decreases in external costs (North Adams Brief at 1). North Adams observed: "Because increased home shopping and leased access revenues result in a net or effective decline in the actual cost of a programming a particular service, increased home shopping revenues and the like should be an offset to other increased external costs" (id.).

The issue of such offsets has been addressed by the FCC. The rate regulations currently state, at 47 C.F.R. § 76.922(f)(7): "[a]djustments to permitted charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by he operator from the programmer. Such adjustments shall apply on a channel-by-channel basis." (Emphasis added.)[9]

Thus, contrary to the position of North Adams, increases in programming costs may only be offset by revenues on a limited channel-by-channel basis. However, 47 C.F.R. § 76.922(f)(7) applies solely to benchmark rate proceedings on FCC Forms 1210 and 1240. Streamlined cost-of-service proceedings on FCC Form 1235 are subject to different rules. On FCC Form 1235, income from home shopping channels and leased access is included as "other cable revenue" and can offset programming expenses on regulated channels. FCC Form 1235 Instructions (February 1996) at 11. Adelphia has specifically recognized this with respect to the Duxbury FCC Form 1235; see III.B. above.

The Cable Division has examined Adelphia's North Adams FCC Form 1240, at

[9] The FCC had already reached the conclusion that adjustments could only be made on a per-channel basis before the second sentence was added to this section. Cable Letter, QVC Network, Inc. (May 6, 1994).

Exhibit V, which provides the channel line-up, and at Exhibit VIII, where programming costs are reported (Exh. 10). North Adams has one home shopping channel on the BST, QVC.[10]
The Cable Division finds that there are no programming fees applicable to QVC shown on Exhibit VIII. Accordingly, any revenues received by Adelphia from QVC do not have to be offset against the programming costs of any other channel under 47 C.F.R. § 76.922(f)(7). Similarly, any income that Adelphia would receive from the Leased Access/Classified Ads channel would not have to be offset, because that channel also has no programming costs (id.).

F. Interest on Unclaimed True-Up

The Cable Division noted that Adelphia had taken all of its available true-up adjustment, yet the Company's operator selected BST rates were below the maximum permitted rates that include all the true-up established by the FCC (Briefing Schedule at 1). This would appear to allow Adelphia to collect interest on unclaimed true-up during more than one ratemaking period. The Cable Division therefore asked Adelphia to provide legal justification for this action (id.).

Adelphia responded by describing how "true-up" is handled on FCC Form 1240 (Adelphia Brief at 1-2). The Company observes that on FCC Form 1240, Module H, the previous year's true-up is not eligible for true-up interest (id. at 1). It also observes that claiming the entire true-up for the current year results in the true-up becoming part of the maximum permitted rate on FCC Form 1240, Line I9 (id. at 2). Adelphia observed:

> If a cable operator charges less than the maximum permitted rate, the resulting undercharge will enter into the next year's true-up calculation. It can perhaps be argued that part of the undercharge represents true-up which is claimed but not taken, but the undercharge is made up of every component of the maximum permitted rate and it would be impossible to discern which element of the rate an operator is choosing not to charge. Indeed, an operator does not think in these terms, but, rather, decides what rate to charge based on marketplace considerations. In any event, the calculations in question are all part of the self-executing mechanics of Form 1240.

(id.)

The Cable Division accepts Adelphia's explanation as a reasonable interpretation of FCC Form 1240.

G. Converter Rental Rates

In response to a Cable Division record request, Adelphia stated that under certain conditions, BST-only subscribers required converters (RR-CATV-2). Adelphia's rate cards show

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[10] A second shopping channel, Home Shopping Network (HSN), is on the CPST, and thus outside the Cable Division's jurisdiction.

only one rate for all converters. In a supplemental record request, the Cable Division questioned whether Adelphia has established a blended converter rate, asked the Company to provide legal support for its use of a blended rate, and if so, we requested that Adelphia refile FCC Form 1205 with a converter category for BST-only subscribers (RR-CATV-20).

In its response, Adelphia said that it had not aggregated the cost of BST-only converters with other converters (RR-CATV-20). Adelphia explained that BST-only subscribers who needed a converter because they did not have a cable-ready television set or VCR could either purchase an inexpensive converter at a retail outlet, or else are given a non-addressable converter by the Company (id. at 1-2). Therefore, Adelphia stated, its FCC Form 1205 converter rate is for addressable converters only, which renders moot the Cable Division's request for a refiling (id. at 2). The Cable Division accepts Adelphia's explanation, and will therefore not require the refiling of FCC Form 1205.

IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Form 1240s as filed on May 1, 1998 for Adams, Cheshire, Clarksburg, Edgartown, Falmouth, Gay Head, Marshfield, North Adams and Oak Bluffs; Adelphia's FCC Form 1240 for Duxbury dated April 25, 1998 as filed on May 1, 1998, and Adelphia's FCC Form 1240 as filed on May 18, 1998 for Plymouth.

Further, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Form 1205s as filed on May 1, 1998 for Adams, Cheshire, Clarksburg, Duxbury, Edgartown, Falmouth, Gay Head, Kingston, Marshfield, North Adams, Oak Bluffs and Plymouth.

Further, the Cable Division directs Adelphia to refile its FCC Form 1240 for Kingston in compliance with this Rate Order, on or before Wednesday, February 3, 1999.

Further, the Cable Division directs Adelphia to file its final FCC Form 1235 for Duxbury in compliance with this Rate Order, upon the activation of its Duxbury rebuild.

The attached schedule provides the current and maximum permitted basic service tier programming and equipment rates for each community.

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

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[*]* **Formally, the "Division of Community Antenna Television" under G.L. c. 166A, § 2.**

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. 1997, c. 164, § 273. 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 7 days of the filing of the initial petition for appeal.