



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY**  
**Cable Television Division**

RATE ORDER

CTV 05-6

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240 and 1205 filed by Adelphia Communications Corporation.

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FOR: ADELPHIA COMMUNICATIONS CORPORATION  
Petitioner

## I. INTRODUCTION

On November 29, 2005, Adelphia Communications Corporation<sup>1</sup> (“Adelphia” 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 Federal Communications Commission (“FCC”) Forms 1240 for Adelphia’s Massachusetts communities<sup>2</sup> subject to rate regulation.<sup>3</sup> This filing was accompanied by Adelphia’s nationwide FCC Form 1205 with proposed equipment and installation rates. Adelphia also proposed network upgrade surcharges on FCC Forms 1235 for the communities of Abington, Bourne, Falmouth, Great Barrington, Halifax, Lee, Lenox, Marshfield, Pembroke, Plympton, Rockland, Sandwich, Sheffield, and Stockbridge. Pursuant to 47 C.F.R. § 76.933(g), Adelphia implemented rate changes resulting from its FCC Forms 1240, 1205 and 1235 filings on March 1, 2006, subject to review and refund.

The Cable Division held a public and evidentiary hearing on February 28, 2006. No communities intervened in this proceeding. The evidentiary record consists of Adelphia’s rate forms admitted as Adelphia Exhibits 1 through 27, Adelphia’s responses to information

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<sup>1</sup> The formal license held by Adelphia Communications Corporation in each of its Massachusetts communities is under one of the following names: Adelphia Cablevision Corp.; Century Berkshire Cable Corp.; Chelsea Communications, L.L.C.; FrontierVision Cable New England, Inc.; Martha’s Vineyard Cablevision, L.P., and Mountain Cable Company, L.P.

<sup>2</sup> The regulated communities are: Abington, Adams, Amesbury, Aquinnah, Bourne, Cheshire, Clarksburg, Duxbury, Edgartown, Essex, Falmouth, Gloucester, Great Barrington, Halifax, Kingston, Lee, Lenox, Manchester-by-the-Sea, Marshfield, Merrimac, North Adams, Oak Bluffs, Pembroke, Plymouth, Plympton, Rockland, Rockport, Salisbury, Sandwich, Sheffield, and Stockbridge.

<sup>3</sup> Four of the FCC Forms 1240 that Adelphia filed on November 29, 2005 did not include all of the required Worksheets. The filings affected were those for Amesbury; Halifax, Pembroke and Plympton (combined filing); Marshfield; and Sheffield. Adelphia filed complete FCC Forms 1240 for these communities on January 28, 2006.

requests admitted as Cable Division Exhibits 1 through 5, and Adelphia's responses to record requests issued by the Cable Division.

## II. REVIEW OF FCC FORMS 1240

### A. Standard of Review and Burden of Proof

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which a cable operator must calculate its rates. The FCC Form 1240 allows a cable operator to annually update its BST 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 the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. §§ 76.922(e)(2)(ii)(A) and 76.922(e)(2)(iii)(A). Cable operators may also project for increases in franchise related costs ("FRCs") to the extent they are reasonably certain and reasonably quantifiable; however, 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 the FCC Form 1240 is found in the FCC's rate regulations. Specifically, the rate regulator shall assure that the rates comply with the requirements of Section 623 of the Communications Act of 1934, as amended. 47 U.S.C. § 543; 47 C.F.R. §§ 76.922, 76.923, and 76.930. The Cable Division may accept as in compliance with the statute BST rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by federal regulations. See 47 C.F.R. § 76.922(a). In addition, the Cable Division shall only

approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 U.S.C. § 543; 47 C.F.R. §§ 76.937(d) and (e), and 76.942.

The burden of proof is on the cable operator to demonstrate that its proposed rates for BST programming comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, at 5716, ¶ 128 (1993) (“Rate Order”); see also 47 C.F.R. § 76.937(a).

B. Discussion and Analysis

1. Copyright Fees and Programming Costs in Adelphia’s Southeast Massachusetts Communities

Adelphia’s current and preceding FCC Forms 1240 for its Southeast Massachusetts communities<sup>4</sup> all contain an identical BST channel lineup (Exhs. Adelphia-1,-5,-6,-8,-11,-12,-14,-16, all at exhibit V, at 2; CTV 04-8, at Exhs. Adelphia-1,-5,-6,-8,-11,-12,-14,-16, all at exhibit V, at 2). Nevertheless, these communities’ current FCC Forms 1240 reported copyright fees and programming costs that differed from those reported on the preceding form (Exh. CTV-2). Programming costs are reported on FCC Form 1240, Worksheet 7, Line 701, for channels carried on the BST during the true-up and projected periods. Copyright fees for BST channels are reported on Line 703. These fees are royalty fees that cable operators must pay to the Licensing Division of the Copyright Office under federal copyright law for the retransmission of television broadcasts from distant stations. See 17 U.S.C. § 111(c) and (d).

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<sup>4</sup> These communities are Abington, Bourne, Duxbury, Falmouth, Halifax, Kingston, Marshfield, Pembroke, Plympton, Plymouth, Rockland and Sandwich. Adelphia has a separate channel lineup for its Martha’s Vineyard communities.

Under the statute, cable operators must calculate and pay their copyright fees semiannually.

17 U.S.C. § 111(d)(1). The filing is typically made on the Library of Congress's Statement of Account, Long Form SA 3 (see RR-CTV-3).

Adelphia initially responded that it had erroneously included the copyright fees and programming costs associated with WGN for the months of December 2004 through April 2005 on the current forms (id.). Adelphia further responded that while it had added WGN to its Southeast Massachusetts lineup on December 15, 2004, it had actually added WGN to the unregulated cable programming services tier ("CPST") in every community, except in Falmouth, where WGN had been added to the BST (Exh. CTV-2(a); RR-CTV-1(a)). Accordingly, Adelphia submitted amended FCC Form 1240 filings that removed WGN's copyright fees and programming costs from the BST rate calculation (Exh. CTV-2).

Subsequently, Adelphia determined that the Company had actually placed WGN on the BST in every community (RR-CTV-1(a)). Adelphia explained that a Company audit had mistakenly concluded that WGN had been added to the CPST, with the result that on May 2, 2005, the Company changed its Southeast Massachusetts channel lineups to show WGN on the CPST (id.).<sup>5</sup> Adelphia submitted a second set of amended FCC Forms 1240 for its Southeast Massachusetts communities, and asked that we accept them (id.; RR-CTV-2).<sup>6</sup> Adelphia also provided its copyright filings for its Southeast Massachusetts communities for the last half of 2004 and the first half of 2005 (RR-CTV-3).

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<sup>5</sup> Adelphia has corrected its Southeast Massachusetts channel lineups internally, and will properly report WGN as a BST channel on its subsequent channel lineup cards (RR-CTV-1(a)).

<sup>6</sup> Adelphia submitted a revised FCC Form 1240 for Falmouth, because its copyright fee had been incorrectly calculated for the initial filing. See footnote 8 infra.

The issue is whether Adelphia has properly reported its copyright fees and programming costs on its second set of amended filings for its Southeast Massachusetts communities. Cable operators calculate their copyright royalty fees by using a formula that takes into account all revenue from any tier of service upon which a distant signal appears (RR-CTV-3, Form MA Plymouth 2004/2, at 2, 7). Adelphia's copyright filing for the last six months of 2004 had properly reported WGN as carried on the BST (id.; see RR-CTV-1(b)).<sup>7</sup> However, Adelphia had identified WGN as a CPST channel on its copyright filing for the first six months of 2005, and it therefore took its CPST revenue into account when it calculated the royalty fee due, which was \$172,704.05 (RR-CTV-1(b); RR-CTV-3, Form MA Plymouth Satellite 2005/1, at 1, 2, 7). The Company then used this higher royalty fee to calculate the copyright fees reported on the initially filed FCC Forms 1240 (id.). Adelphia has now recalculated its copyright royalty fee for the first half of 2005, correctly reported WGN on the BST, and removed its CPST revenues from the fee calculation (RR-CTV-1(b); RR-CTV-3, Form MA Plymouth 2005/1, at 7). This change reduces Adelphia's royalty fee for the first half of 2005 to \$60,524.29 (id.). Consequently, Adelphia's second set of revised FCC Form 1240 filings reflects substantially reduced copyright fees from those included on the original forms. The monthly copyright fee per subscriber for the projected period decreased in all communities from \$0.359 on the original filing to \$0.126 on the second revised filing (see, e.g., Exh. Adelphia-6, at exhibit VII; RR-CTV-1(a), at Duxbury filing, at

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<sup>7</sup> For copyright royalty purposes, if a channel is carried on a tier of cable service for any portion of a six-month period, the royalty fee is calculated as if the channel was carried on that tier for the entire period.

exhibit VII).<sup>8</sup> The Cable Division finds that Adelphia has correctly adjusted its copyright costs to properly reflect WGN as a BST distant signal.

Adelphia's treatment of WGN's programming costs<sup>9</sup> on its initial filings similarly reflected the Company audit, effective May 2, 2005, that concluded that WGN was on the CPST in all communities except Falmouth (Exh. CTV-2(a)). For the months from December 2004 through April 2005, the first five months of the true-up period, the Company reported WGN's programming costs on the FCC Forms 1240, as though WGN were on the BST (id.; see, e.g. Exh. Adelphia-6, at exhibit vi). For the remaining seven months of the true-up period and for the projected period, these programming costs were not included (see, e.g., Exh. Adelphia-6, at exhibits vi and vii). The only exception was on the Falmouth form, where Adelphia always considered WGN to be on the BST, and so WGN's programming costs were included on the Falmouth form for both the true-up and projected period (Exh. CTV-2(a); see Exh. Adelphia-8, exhibits vi and vii). On its second amended filings, Adelphia included WGN's programming costs for all 24 months of the true-up and projected periods (see, e.g., RR-CTV-1(a), at Duxbury filing, at exhibits vi and vii). This change increased per-subscriber programming costs for all Southeast Massachusetts communities, except Falmouth, by \$0.05 per month.

The Cable Division, having reviewed all channel line-ups and evidence related to the appropriate treatment of WGN's copyright fees and programming costs, hereby accepts

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<sup>8</sup> The same decrease in copyright fees is also reflected on the Falmouth forms. Even though Adelphia stated that it initially placed WGN on the BST (see Exh. CTV-2), the monthly per-subscriber copyright fee rate entered onto the initial Falmouth FCC Form 1240 was the same as that all other communities: \$0.359; which included the copyright fees derived from the erroneous inclusion of WGN on the CPST (Exh. Adelphia-8, at exhibit VII; compare, e.g., Exh. Adelphia-6, at exhibit VII).

<sup>9</sup> Although distant signals are subject to copyright fees instead of regular programming costs, cable operators pay uplink and microwave charges to receive distant signals, and classify these costs as programming costs.

Adelphia's second amended filings for the Southeast Massachusetts communities. Accordingly, we conclude that the BST MPRs established by the forms submitted for Abington, Bourne, Duxbury, Falmouth, Halifax, Kingston, Marshfield, Pembroke, Plympton, Plymouth, Rockland and Sandwich with RR-CTV-1(a) and RR-CTV-2 are just and reasonable and in compliance with applicable law.

Based on our review of the record, we also conclude that the BST MPRs established by the FCC Forms 1240 filed for Adams, Amesbury, Aquinnah, Cheshire, Clarksburg, Edgartown, Great Barrington, Essex, Gloucester, Lee, Lenox, Manchester-by-the-Sea, Merrimac, North Adams, Oak Bluffs, Rockport, Salisbury, Sheffield and Stockbridge are just and reasonable and in compliance with applicable law.

### III. REVIEW OF THE FCC FORM 1205

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. Instructions for FCC Form 1205, at 7, 12-13. The 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 the 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). As with the FCC Form 1240, the burden of proof is on the cable operator to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; Rate Order at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a). Based on our review, we find that the FCC Form 1205 filed by Adelphia establishes rates for equipment and installations that are reasonable and in compliance with applicable law.

#### IV. FCC FORM 1235 FILINGS

##### A. Introduction

Cable operators making significant upgrades to their systems are allowed to recover their upgrade costs by adding an upgrade surcharge to their FCC Form 1240 rates calculated through an abbreviated cost of service showing. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, and Adoption of a Uniform Accounting System for Provision of Regulated Service: Report & Order and Further Notice of Proposed Rulemaking, MM Docket No. 93-215 and CS Docket No. 94-28, FCC 94-39, 9 FCC Rcd 4527, at 4674-4676 (1994) (“Cost Order”); see 47 C.F.R. § 76.922(j). Pursuant to the Cost Order, the FCC developed FCC Form 1235 as an abbreviated cost-of-service filing that enables cable operators to justify rate increases based upon significant capital expenditures used to improve regulated cable services. Id. at 4676; FCC Form 1235, Instructions for Completion of Abbreviated Cost of Service Filing for Cable Network Upgrades (February 1996) (“Instructions for FCC Form 1235”) at 1. The FCC determined that a cable operator who makes significant upgrades to its systems should be allowed to recover the costs of the upgrade by adding a network upgrade surcharge to its rates otherwise determined pursuant to FCC Form 1240 methodologies. Id. An operator, therefore, is permitted to set a BST rate based on two components. The first component is the benchmark rate, i.e., the rate established by FCC Form 1240. The second component is the network upgrade surcharge. The sum of these two components will yield the maximum allowable rate that may be charged to subscribers. Id.; 47 C.F.R. § 76.922(j)(5). Thus, the network upgrade surcharge is a separate calculation on FCC Form 1235, which, if approved, may be added to the overall BST MPR. See FCC Form 1235, page 3, Part III, Line 4, and Instructions for FCC Form 1240, at 9.

The FCC does not require a cable operator to delay the recovery of its costs until the entire upgrade is complete. Instead, the FCC allows cable operators to file an FCC Form 1235 for pre-approval, using projected upgrade costs. Instructions for FCC Form 1235, at 2. A pre-approval filing may be made at any time before the services become available to subscribers, using projected upgrade costs. Id. The pre-approval upgrade surcharge may be charged to subscribers as soon as their portion of the cable system has been upgraded and providing upgraded services. Id. If the pre-approval option is exercised, the cable operator must again file its FCC Form 1235 for final approval. Id. This second filing will primarily entail the substitution of actual costs for projected costs. Id.

B. Standard of Review

The FCC established five criteria that a network upgrade must satisfy before a cable operator may recover upgrade costs through the FCC Form 1235. See Cost Order at 4675-4676, ¶¶ 287-289; See also Public Notice, Cable Services Bureau Develops System Upgrade Form, DA 95-1893, 11 FCC Rcd 5554 (1995). The same standards apply to both FCC Forms 1235 filed for pre-approval and for final approval. Marcus Cable Partners, L.L.C., DA 00-1071, ¶¶ 8-12 (2000) (pre-approval); Cox Communications San Diego, Inc., Chula Vista, DA 98-1536, 13 FCC Rcd 17653, at 17655-17659, ¶¶ 6-15 (1998) (final approval). First, the upgrade must be significant and require added capital investment, such as the expansion of bandwidth capacity and conversion to fiber optics, and for system rebuilds. Cost Order at 4675, ¶ 287; see Instructions for FCC Form 1235, at 5; FCC Form 1235, at 1. Second, the upgrade must actually benefit subscribers of regulated services, through improvements in those services. Cost Order at 4675, ¶ 287; 47 C.F.R. § 76.922(j)(1). Third, the upgrade must be complete and providing benefits to subscribers of regulated services before the operator may assess the network upgrade surcharge.

Cost Order at 4675, ¶ 288; 47 C.F.R. § 76.922(j)(2). Fourth, cable operators seeking an upgrade rate increase have the burden of demonstrating the amount of the net increase in costs, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in regulated revenues and expected economies of scale. Cost Order at 4675-4676, ¶ 289; 47 C.F.R. § 76.922(j)(3). Fifth, the operator must allocate the net increase in costs in conformance with the FCC's cost allocation rules for cost-of-service showings, to assure that only costs allocable to regulated services are imposed on subscribers to those services.

Cost Order at 4676, ¶ 289; 47 C.F.R. § 76.922(j)(4).

### C. Discussion and Analysis

In our 2004 Adelphia rate proceeding, we approved four FCC Form 1235 filings that the Company had submitted for pre-approval. Adelphia Cable Communications, Inc., CTV 03-5, at 11-15, 17 (2004). These consisted of individual filings for Falmouth and Marshfield, and two combined filings: one for the seven communities of Abington, Bourne, Halifax, Pembroke, Plympton, Rockland and Sandwich (the "Abington systems"); and the second for Great Barrington, Lee, Lenox, Sheffield and Stockbridge (the "Great Barrington system"). Id. at 11. Specifically, in that proceeding, we found that Adelphia's method of calculating its system upgrade surcharges in each pre-approval filing satisfied the FCC's five upgrade criteria. CTV 03-5, at 8-15. In this proceeding, Adelphia has filed, for final approval, revised FCC Forms 1235 for these communities (Exhs. Adelphia-20 through -26).

#### 1. The Abington Systems

Adelphia's final FCC Form 1235 for the Abington systems, like the pre-approval form, includes only the costs of the upgraded distribution facilities, and depreciates these costs over the same 12-year life that we approved in 2004. CTV 03-5, at 12; Exh. Adelphia-20, at 8. The

Company's final form shows 22 post-rebuild BST channels, and like the pre-approval form, allocates 20 percent of the total costs of the upgrade to the BST. CTV 03-5, at 13; Exh. Adelpia-20, at 7. The Company's final form reports that the Abington systems have been rebuilt to an analog capacity of 110 channels, the same capacity as specified in the pre-approval filing. CTV 03-5, at exhibit 21, at 7; Exh. Adelpia-20, at 7. It also states that the upgrade has been completed, and that subscribers began receiving services during 2004 (Exh. Adelpia-20, at 2). When the Abington systems' form had been presented for pre-approval, the Company had explained that the accounting for the upgrade had not yet been closed, and that additional project costs would be added to the final filing. CTV 03-5, at 12. Consequently, the Company's final form reports additional costs: the total distribution plant mileage of the upgrade is 846.90 miles, compared with the pre-approval projection of 795.48 miles, and that the final cost of the upgrade is \$21,529,816, instead of the \$20,659,382 projected in the pre-approval form. CTV 03-5, at 11, n.8, and at RR-CTV-6, attachment I; Exh. Adelpia-20, at 7. The Company has thus applied the same methodology the Cable Division previously approved. We find that the Company's additional costs are only an incremental increase over its initially estimated costs, and that the increase in costs is appropriate. These changes increase the Abington systems' upgrade surcharge from \$2.71 to \$2.74, an increase we accept as reasonable. CTV 03-5, at Rate Schedule; Exh. Adelpia-20, at 3. The Company did not change other aspects of the pre-approval FCC Form 1235 filing when it prepared its final filing.

Accordingly, we conclude that Adelpia's final FCC Form 1235 for the Abington systems is consistent with the pre-approval filing that we previously approved, and that it satisfies the FCC's five upgrade criteria. We further conclude that the Company is eligible for the recovery of costs associated with its upgrade in Abington, Bourne, Halifax, Pembroke, Plympton,

Rockland and Sandwich. We further find that the Company's final FCC Form 1235 filed for the Abington systems is reasonable and in compliance with applicable law, and that the final upgrade surcharge proposed therein is reasonable.

2. Falmouth

Adelphia's final FCC Form 1235 for Falmouth, like the pre-approval form, includes only the costs of the upgraded distribution facilities, and depreciates these costs over the same 12-year life that we approved in 2004. CTV 03-5, at 12; Exh. Adelpia-22, at 8. The Company's final Falmouth form also reports 21 post-rebuild BST channels, and like the pre-approval form, allocates 19.09 percent of the total costs of the upgrade to the BST. CTV 03-5, at 13; Exh. Adelpia-22, at 7. The Company's final form reports that the Falmouth system has been rebuilt to an analog capacity of 110 channels, the same capacity as specified in the pre-approval filing. CTV 03-5, at exhibit 23, at 7; Exh. Adelpia-22, at 7. It also states that the upgrade has been completed, and that subscribers began receiving services during 2004 (Exh. Adelpia-22, at 2). When the Falmouth form had been presented for pre-approval, the Company had explained that the accounting for the upgrade had not yet been closed, and that additional project costs would be added to the final filing. CTV 03-5, at 12. Consequently, the Company's final form reports additional costs: the total distribution plant of the upgrade is 367.25 miles, compared with the pre-approval projection of 357.56 miles, and that the total cost of the upgrade is \$7,908,285, instead of the \$7,641,432 projected in the pre-approval form. CTV 03-5, at 11, n.8, n.9; Exh. Adelpia-22, at 7. The Company has thus applied the same methodology the Cable Division previously approved. We find that the Company's additional costs are only an incremental increase over its initially estimated costs, and that the increase in costs is appropriate. These changes increase Falmouth's network upgrade surcharge from \$1.95 to \$2.21, an increase

we accept as reasonable. CTV 03-5, at Rate Schedule; Exh. Adelpia-22, at 3. The Company did not change other aspects of the pre-approval FCC Form 1235 filing when it prepared its final filing.

Accordingly, we conclude that Adelpia's final FCC Form 1235 for Falmouth is consistent with the pre-approval filing that we previously approved, and that it satisfies the FCC's five upgrade criteria. We further conclude that the Company is eligible for the recovery of costs associated with its upgrade in Falmouth. We further find that the Company's final FCC Form 1235 filed for Falmouth is reasonable and in compliance with applicable law, and that the final upgrade surcharge proposed therein is reasonable.

### 3. The Great Barrington System

Adelpia's final FCC Form 1235 for the Great Barrington system, like the pre-approval form, includes only the costs of the upgraded distribution facilities, and depreciates these costs over the same 12-year life that we approved in 2004. CTV 03-5, at 12; Exh. Adelpia-23, at 8. Adelpia also reports that subscribers in the Great Barrington system began to be transferred to the upgraded system in July 2003, and that the transfer was completed in February 2004 (Exh. CTV-5(B) and (C)). The Company's final form also reports 22 post-rebuild BST channels, like the pre-approval form. CTV 03-5, at 14, Exh. Adelpia-23, at 7. However, whereas the Company's pre-approval form reported that the system was being rebuilt to carry 110 analog channels, the final form reported that the system capacity was actually 128 analog channels. CTV 03-5, at exhibit 24, at 7; Exh. Adelpia-23, at 7. This change occurred because Adelpia rebuilt the Great Barrington system to 860 MHz, instead of the originally-intended 750 MHz (Tr. at 6-7). The final form thus reduced the percentage of channels allocated to the BST from 20 percent to 17.2 percent, and also reduced the percentage of the upgrade's total expenses that

were allocated to the regulated BST. CTV 03-5, at exhibit 24, at 7; Exh. Adelpia-23, at 7, Tr. at 10. When the Great Barrington system's form had been presented for pre-approval, the Company had explained that the accounting for the upgrade had not yet been closed, and that additional project costs would be added to the final filing. CTV 03-5, at 12. Consequently, the Company's final form reports additional costs: the total distribution plant mileage of the upgrade is 344.85 miles, compared with the pre-approval projection of 332.16 miles, and that the final cost of the upgrade is \$9,620,264, instead of the \$9,570,992 projected on the pre-approval form. CTV 03-5, at 11, n.8, n.9; Exh. Adelpia-23, at 7. The Company has thus applied the same methodology the Cable Division previously approved. We find that the Company's additional costs are only an incremental increase over its initially estimated costs, and that the increase in costs is appropriate. These changes, together with the reduction in the total costs allocated to the BST because of the upgrade to 860 MHz, reduce the Great Barrington system's network upgrade surcharge from \$4.53 to \$3.87, which we accept as reasonable. CTV 03-5, at 14; Exh. Adelpia-23, at 3. The Company did not change other aspects of the pre-approval FCC Form 1235 filing when it prepared its final filing.

Accordingly, we conclude that Adelpia's final FCC Form 1235 for the Great Barrington system is consistent with the pre-approval filing that we previously approved, and that it satisfies the FCC's five upgrade criteria. We further conclude that the Company is eligible for the recovery of costs associated with its upgrade in the Great Barrington system.

However, there is an issue with the Company's surcharge. Beginning in March 2004, Adelpia charged a total BST rate in the Great Barrington system of \$13.85, which included the approved BST MPR of \$9.58 (\$9.92 in Sheffield), and a portion of the upgrade surcharge of \$4.53. CTV 03-5, at Rate Schedule. Because the surcharge should only have been \$3.87, a total

BST rate of \$13.85 exceeds the maximum permissible charge (Tr. at 8-9). Adelphia is proposing to refund to subscribers any overcharges they paid for the period between March 2004 and November 2004 (Id.: Exh. CTV-5(D)). The Company has presented a refund plan (Exh. CTV-5(D) at exhibit II). The Company proposes to pay its refunds after completion of the rate review, to minimize the number of potential billing changes (Exh. CTV-5(D)).

For charges that occurred between December 2004, the first month of the true-up period, and September 2005, the Company proposed to compensate subscribers through the form's true-up mechanism (Exh. CTV-1).<sup>10</sup> In Great Barrington, Lee, Lenox and Stockbridge, the overcharges amounted to \$0.40 per month between December 2004 and February 2005, and to \$0.66 per month between March and September 2005; in Sheffield, these overcharges amounted to \$0.06 per month between December 2004 and February 2005, and to \$0.66 per month between March and September 2005 (id.).<sup>11</sup> Adelphia proposed adding the overcharges to the actual BST rates it has reported on Worksheet 8 of the FCC Form 1240s. (Exh. CTV-1; Exhs. Adelphia-10, -19, at Worksheet 8). This adjustment increases the average actual BST rate for the true-up period, which is calculated at Worksheet 8, Line 813. As a result, the amount of true-up calculated on the FCC Form 1240 is reduced, which in turn results in a lower proposed BST MPR for the projected period commencing on March 1, 2006.<sup>12</sup> On the FCC Form 1240

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<sup>10</sup> Effective October 1, 2005, Adelphia reduced its BST rate in the Great Barrington communities to \$11.50 (Exh. CTV-1). In Great Barrington, Lee, Lenox and Stockbridge, this rate is comprised of the BST MPR of \$8.41 plus \$3.09 of the \$3.87 upgrade surcharge (id.). In Sheffield, this rate consists of the BST MPR of \$8.10 plus \$3.40 of the \$3.87 upgrade surcharge (id.).

<sup>11</sup> These overcharges have been reduced by the amount of the refunds that Adelphia paid subscribers pursuant to the refunds we ordered in Adelphia Cable Communications, Inc., CTV 04-8, "Order on Compliance Filing" (2005) (Exh. CTV-1).

<sup>12</sup> True-up is calculated by subtracting the revenue that the cable operator actually earned  
(continued...)

filed for Great Barrington, Lee, Lenox and Stockbridge, there was negative true-up of \$0.82 per subscriber per month, and in Sheffield, there was negative true-up of \$0.92 per subscriber per month; which reduces each form's potential BST MPR by this amount (Exhs. Adelpia-10, at 4; Adelpia-19 (revised), at 4).

Adelpia has proposed an actual operator-selected BST rate of \$11.50 for all Great Barrington system communities. In Great Barrington, Lee, Lenox and Stockbridge, this consists of a BST MPR of \$8.18 and \$3.32 of the \$3.87 upgrade surcharge (Exh. Adelpia-10, at exhibit 1). In Sheffield, this consists of a BST MPR of \$7.88, and \$3.62 of the \$3.87 upgrade surcharge (Exh. Adelpia-19, at exhibit 1). These BST MPRs incorporate the downward adjustment resulting from the FCC Form 1235 overcharges. In addition, Adelpia's total BST rates no longer exceed the maximum rate it is permitted to charge. We conclude that the Company's proposed adjustments are reasonable, because they pass through to subscribers reductions in the BST MPRs that compensate for the overcharges. Furthermore, because these reduced BST MPRs will be passed through onto successive rate forms, the adjustments will provide long-term benefits to subscribers, in the form of lower BST MPRs in future years. We find that the Company's final FCC Form 1235 filed for the Great Barrington system is reasonable and in compliance with applicable law, and that the final upgrade surcharge proposed therein is reasonable.

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<sup>12</sup>(...continued)

during the true-up period, Line H1, from the revenue the cable operator could have earned had it charged the maximum permitted rate, Line H2. Instructions for FCC Form 1240, at 19-20. Line H1 is calculated by multiplying the average monthly rate calculated by Worksheet 8 by the number of months in the true-up period and the number of subscribers. By increasing the monthly rates reported on Worksheet 8, Adelpia increased Line H1. The result was that Line H1 exceeded H2, resulting in negative true-up and lower BST rates.

4. Marshfield

Adelphia's final FCC Form 1235 for Marshfield, like the pre-approval form, includes only the costs of the upgraded distribution facilities, and depreciates these costs over the same 12-year life that we approved in 2004. CTV 03-5, at 12; Exh. Adelphia-25, at 8. The Company's final form also reports 22 post-rebuild BST channels, and like the pre-approval form, allocates 20 percent of the total costs of the upgrade to the BST. CTV 03-5, at 13; Exh. Adelphia-25, at 7. The Company's final form reports that the Marshfield system has been rebuilt to an analog capacity of 110 channels, the same capacity as specified in the pre-approval filing. CTV 03-5, at exhibit 26, at 7; Exh. Adelphia-25, at 7. It also states that the upgrade has been completed, and that subscribers began receiving services during 2004 (Exh. Adelphia-25, at 2). When the Marshfield form had been presented for pre-approval, the Company had explained that the accounting for the upgrade had not yet been closed, and that additional project costs would be added to the final filing. CTV 03-5, at 12. Consequently, the Company's final form reports additional costs: the total distribution plant mileage of the upgrade is 191.33 miles, compared with the pre-approval projection of 188.93 miles, and that the total cost of the upgrade is \$4,755,283, instead of the \$4,632,634 projected in the pre-approval form. CTV 03-5 at 11, n.8, n.9; Exh. Adelphia-25, at 7. The Company has thus applied the same methodology the Cable Division previously approved. We find that the Company's additional costs are only an incremental increase over its initially estimated costs, and that the increase in costs is appropriate. These changes increase the network upgrade surcharge from \$2.25 to \$2.28, an increase we accept as reasonable. CTV 03-5 at Rate Chart; Exh. Adelphia-25, at 3. The Company did not change other aspects of the pre-approval FCC Form 1235 filing when it prepared its final filing.

Accordingly, we conclude that Adelphia's final FCC Form 1235 for Marshfield is consistent with the pre-approval filing that we previously approved, and that it satisfies the FCC's five upgrade criteria. We further conclude that the Company is eligible for the recovery of costs associated with its upgrade in Marshfield. We further find that the Company's final FCC Form 1235 filed for Marshfield is reasonable and in compliance with applicable law, and that the final upgrade surcharge proposed therein is reasonable.

V. 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 Forms 1240 as filed on November 29, 2005, for Adams, Aquinnah, Cheshire, Clarksburg, Edgartown, Essex, Gloucester, Great Barrington, Lee, Lenox, Manchester-by-the-Sea, North Adams, Oak Bluffs, Merrimac, Rockport, Salisbury, and Stockbridge.

Further, upon due notice, hearing, and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Forms 1240 as filed on January 28, 2006, for Amesbury and Sheffield.

Further, upon due notice, hearing, and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Forms 1240 as submitted with Record Requests CTV-1 and CTV-2, for Abington, Bourne, Duxbury, Falmouth, Halifax, Kingston, Marshfield, Pembroke, Plympton, Plymouth, Rockland, and Sandwich.

Further, 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 1205 as filed on November 29, 2005, for Abington, Adams, Amesbury, Aquinnah,

Bourne, Cheshire, Clarksburg, Duxbury, Edgartown, Essex, Falmouth, Gloucester, Great Barrington, Halifax, Kingston, Lee, Lenox, Manchester-by-the-Sea, Marshfield, Merrimac, North Adams, Oak Bluffs, Pembroke, Plymouth, Plympton, Rockland, Rockport, Salisbury, Sandwich, Sheffield and Stockbridge.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Adelphia's FCC Forms 1235 as filed on November 29, 2005, for Abington, Bourne, Falmouth, Great Barrington, Halifax, Lee, Lenox, Marshfield, Pembroke, Plympton, Rockland, Sandwich, Sheffield and Stockbridge.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable, Adelphia's refund plan, submitted with Exh. CTV-5, for Great Barrington, Lee, Lenox, Sheffield and Stockbridge. The Cable Division directs Adelphia to pay these refunds within 45 days of the date of this Order. The Cable Division further directs Adelphia to file, within 30 days of the payment of these refunds, a report that describes: (1) the date the refund was paid; (2) the amount of the refund credited to each subscriber's bill; (3) the total amount of the refunds paid in each community.

The attached schedule provides, for each community, Adelphia's previous and current

actual rates, as well as its proposed and approved maximum permitted rates, and proposed and approved network upgrade surcharges.

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

*/s/ Alicia C. Matthews*  
**Alicia C. Matthews**  
**Director**

Issued: April 27, 2006

## Rate Chart

see Excel File

## Rate Chart

see Excel File

### **RIGHT OF APPEAL**

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.