



Agenda Date: 10/28/20
Agenda Item: 3A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF THE FILING BY TWFRANCH-ONE) ORDER
CO., d/b/a TIME WARNER CABLE (BERGEN SYSTEM))
RATE CHANGE UNDER AGGREGATE FCC FORM)
1205 DETERMINING REGULATED EQUIPMENT AND) BPU DOCKET NO. CR02100723
INSTALLATION COSTS) OAL DOCKET NO. CTV9775-02N

Parties of Record:

Dennis C. Linken, Esq., Scarinci and Hollenbeck, LLC, for Charter Communications, Inc.
Stephanie A. Brand, Director, for New Jersey Division of Rate Counsel

BY THE BOARD:

The instant matter was opened upon the filing on October 1, 2002 by TWFranch-One d/b/a Time Warner Cable, Bergen System (Time Warner), n/k/a Spectrum New York, LLC ("Spectrum"), a local cable television operating subsidiary of Charter Communications, Inc. ("Charter") of an annual Federal Communications Commission (FCC) Form 1240 for the Bergen New Jersey system accompanied by an Aggregate FCC Form 1205 covering the cable equipment and Installation costs for all Time Warner systems nationwide, including the Bergen New Jersey system.

The matter was deemed a contested case and on October 31, 2002, the Board transmitted both filings to the Office of Administrative Law (OAL) for initial disposition pursuant to N.J.S.A. 52:14B-2(b). Plenary hearings on these filings were held before Administrative Law Judge (ALJ) William Gural on May 8 and 9, 2003. Appearing in the proceeding were the Board's Staff (Staff), the New Jersey Division of the Ratepayer Advocate (RPA) n/k/a New Jersey Division of Rate Counsel (Rate Counsel), and Time Warner (collectively the Parties). On July 8, 2003, ALJ Gural issued his Initial Decision. On or about July 28, 2003, Time Warner and RPA filed Exceptions to the Initial Decision, with Reply Exceptions filed on August 4, 2003. The Board decided the matter at its August 18, 2003 regularly scheduled agenda meeting and issued an Order Adopting the Initial Decision on August 19, 2003 and ordered refunds consistent with the Order to be issued within sixty (60) days of the decision.

Thereafter, on September 22, 2003, Time Warner filed an appeal of the Board's final rate Order with the FCC. Replies to the appeal were filed by Staff and Rate Counsel on October 21 and October 22, 2003 respectively. Time Warner filed its reply to Staff and Rate Counsel's oppositions to its appeal on November 7, 2003. The matter has been pending at the FCC since that time.

BACKGROUND AND PROCEDURAL HISTORY

Pursuant to rules adopted February 22, 1994, the FCC Form 1200 was used by cable operators to justify the reasonableness of their basic service tier cable rates in effect as of May 15, 1994 by setting a benchmark maximum permitted rate. Under the "Benchmark" method a cable operator establishes its rates on the basis of an analysis done by the FCC comparing the differences between cable operators then subject to competition and those that were not. In using this method, the cable operator calculated a permitted per channel rate, and removed the portion of the rate related to equipment calculated in the Form 1205, and multiplies the remainder by the number of channels on the basic service tier. This form also allowed cable operators to adjust for increases in external costs from the beginning of rate regulation to March 15, 1994.

FCC Form 1205 initially filed in conjunction with the Form 1200 was used to calculate allowable equipment and maintenance rates pertaining to converters, remotes, installations and home wiring. Generally, this form was submitted with a Form 1200 and then on an annual basis thereafter. The FCC instructions for the Form 1205 clearly stipulate that under its rules, the actual cost of regulated equipment and installations plus a reasonable profit must be separated, or "unbundled," from the cable operator's maximum permitted rates for regulated cable services.

The Board is the local franchising authority in New Jersey and at the time of the filings was certified to regulate basic service rates and associated equipment and installation charges pursuant to 47 C.F.R. § 76.910. Pursuant to the rules, Time Warner bore the burden of proof to demonstrate the reasonableness of its existing and proposed rates for basic service, associated equipment and installations charges. 47 C.F.R. § 76.937(a). The major issue before ALJ Gural was whether Time Warner provided sufficient proof to support its request for the rate changes and increases being sought. The ALJ also considered an issue surrounding Time Warner's obligation to aggregate the costs of converters used by its basic only subscribers separately from the costs for more advanced equipment used by non-basic only subscribers and the allowable rate for the converters.

In his Initial Decision, ALJ Gural found that Time Warner did not meet its burden of proof, required under 47 C.F.R. § 76.937, in support of its FCC Form 1205 because Time Warner had included cost categories which had not been previously "carved out" in the earlier rounds of rate regulation as part of the FCC Form 1200 / 1205 process. Because the initial process creates a direct linkage between Basic rates and equipment and installation charges, any Form 1205 costs not unbundled or backed-out of Form 1200 during the initial 1200/1205 process are therefore recovered in Basic service rate. ALJ Gural further determined that Time Warner may charge no more than the basic converter rate listed in its National FCC Form 1205 for any equipment necessary for basic only subscribers to receive BST service.

The Board, after careful review of the totality of the record, including the Initial Decision, the Exceptions and Reply Exceptions substantially agreed with the recommendations of the ALJ regarding the calculation of rates in the Form 1205 and Time Warner's burden of proof. The Board further found in its Order Adopting the ALJ's Initial Decision that Time Warner's decision

to neither supply the basic level converter in the Bergen system nor broadcast WLNY in an analog format did not relieve it of the responsibility to provide BST customers with the equipment necessary to receive BST service at the lowest equipment cost. Time Warner subsequently filed an appeal of the Board's Order with the FCC, which has remained pending.

On or about May 18, 2016, Charter acquired Time Warner, including its Bergen New Jersey system. As part of the merger and acquisition, Charter subsumed responsibility for all Time Warner's pending obligations including the potential refund liability presented by the instant matter.

In light of the longstanding nature of the matter at bar which has been pending for 17 years under appeal, the parties engaged in negotiations in an effort to settle the outstanding issues in the matter and finalize the matter without further delay. In furtherance of these discussions, Charter submitted a Stipulation of Settlement whereby the pending appeal would be withdrawn with prejudice from the FCC and customers in the Bergen system would receive a monetary credit and be permitted to participate in certain equipment and programming in kind benefits. The parties agreed in principle to the form of Offer and executed a Stipulation of Settlement on October 21, 2020.

Specifically, as more fully outlined in the attached Stipulation of Settlement, the agreement calls for a three prong agreement whereby Spectrum would:

- a) Monetary Credit: issue a monetary credit in the aggregate of \$750,000 on a pro rata basis to the monthly bills of residential cable customers in New Jersey ("residential cable customers" do not include bulk customers and commercial customers) who had accounts with Spectrum as of October 1, 2020. The credit would begin on the first billing cycle following the Credit Implementation Date, which shall be a date on or about ninety (90) days from the date of approval of the Stipulation by the Board. The monthly credit will be set to an appropriate level to ensure that the total committed credit is issued to eligible accounts.
- b) Device Offer: will offer Eligible Customers one Apple TV device (*which can be used by TWCNYC customers to replace such customers' set top cable box*) per Eligible Customer account at the discounted rate of \$90.00 per device (approximately 50% off the retail price of the equipment) (the "Device Offer"). Eligible Customers will have the option of paying for the device on an extended payment plan at the rate of \$3.99 per month over a twenty-three (23) month period or in a lump sum. Eligible Customers must contact Spectrum during the Device Offer Window, which shall begin on a date (the "Device Offer Implementation Date") approximately ninety (90) days from the date of Board approval of this Stipulation and shall expire ninety (90) days thereafter.
- c) Programming Services Offer: Charter will offer Eligible Customers the opportunity to receive at no charge either (i) HBO for a two-month period (provided that the Eligible Customer is not a Spectrum subscriber to HBO as of the Programming In-Kind Implementation Date, as defined below) or (ii) Showtime for a four-month period (provided that the Eligible Customer is not a Spectrum subscriber to Showtime as of the Programming In-Kind Implementation Date). Eligible Customers must contact Spectrum during the Programming Offer Window, which shall begin on a date approximately ninety (90) days from the date of approval of the Stipulation by the Board and shall expire ninety (90) days thereafter.

Notice of the benefits set forth by Stipulation will be provided to eligible customers on a page or pages of the customer's monthly bills and will explain the respective offer(s), eligibility, important dates, actions needed by the customer, and contact information. Notice regarding the Credit will be provided concurrently with commencement of the Credit. Notice regarding the Device Offer and the Programming Service Offer will be included in customer bills during the month prior to the commencement of the Device Offer Window and Programming Offer Window, respectively.

The Board has reviewed the Stipulation of Settlement and **FINDS** it to be reasonable, in the public interest and in accordance with the law. Therefore, the Board **HEREBY ADOPTS** the Stipulation of Settlement (attached hereto) as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

The Board **HEREBY ORDERS** that Spectrum shall submit a certified credit liability and equipment and programming in kind statement to the Office of Cable Television and Telecommunications, verified by an authorized officer of the corporation, within thirty (30) days of the date of this Order which shall at a minimum include, but not be limited to, the following items: a) the number of residential customers eligible to receive the credit, the approximate monthly and total credit to be issued per subscriber; b) the number of customers by class of service and total eligible to participate in the equipment in kind offer; c) the number of customers by class of service and total eligible to participate in the programming in kind offer.

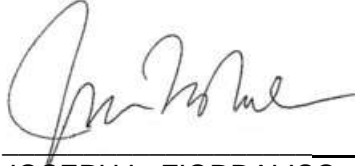
The Board **FURTHER ORDERS** that Spectrum shall commence the issuance of refunds due its customers pursuant to the Board's approval of this Offer of Settlement no later than ninety (90) days of the date of the Board Order or within sixty (60) days after approval of its refund liability statement by the Office, and that Spectrum shall inform customers of the reason for the refunds. Said refunds shall be denominated "BPU Refund" on customers' bills.

The Board **FURTHER ORDERS** that Spectrum shall no later than sixty (60) days after effectuating the entire credit to its subscribers described herein and following the expiration of the equipment and programming in kind offers and completing its obligations related thereto, shall provide a final accounting of all credits issued and submit a final report to the Office which shall at a minimum include, but not be limited to, the following items: a) the number of subscribers notified of the credit, the monthly amount credited and total credit issued per subscriber and the aggregate total of all such refunds; b) a copy of ten (10) sample subscriber bills reflecting the credit; c) the number of customers by class of service notified of the equipment in kind offer, the total number of customers who purchased the Apple TV device of \$90 pursuant to the offer, d) the number of customers by class of service notified of the programming in kind offer; e) the total number of customers by class of service who were provided with free HBO and total value of the free service; f) the total number of customers by class of service who were provided with free Showtime and total value of the free service; g) a copy of ten (10) sample subscriber bills reflecting free HBO or free Showtime, five of which will be from each service.

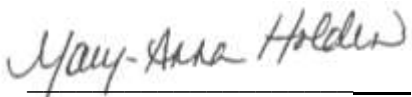
This Order will be effective on November 7, 2020

DATED: October 28, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE FILING BY TWFRANCH-ONE CO., d/b/a TIME WARNER CABLE
(BERGEN SYSTEM) RATE CHANGE UNDER AGGREGATE FCC FORM 1205
DETERMINING REGULATED EQUIPMENT AND INSTALLATION COSTS
BPU DOCKET NO. CR02100723
OAL DOCKET NO. CTV9775-02N

SERVICE LIST

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BEFORE THE STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION & TELECOMMUNICATIONS

IN THE MATTER OF TWFANCH-ONE)		
CO., D/B/A TIME WARNER CABLE)	OAL Docket No.	CTV 009775-02
(BERGEN SYSTEM) RATE CHANGE)		
UNDER FORM 1205 DETERMINING)		
REGULATED EQUIPMENT AND)	BPU Docket No.	CR02100723
REGULATION COSTS)		

STIPULATION OF SETTLEMENT

Appearances:

Scarinci & Hollenbeck, LLC by Dennis C. Linken, Esq., for Charter Communications, Inc. and Spectrum New York Metro, LLC, f/k/a Time Warner Cable New York City, LLC.

Gurbir S. Grewal, Attorney General of New Jersey, by Alex Moreau, Deputy Attorney General, for the Staff of the Board of Public Utilities.

Stephanie A. Brand, Esq., Director of the Division of Rate Counsel, by Maria Novas-Ruiz, Deputy Rate Counsel, for the Division of Rate Counsel.

WHEREAS, the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), codified at 47 U.S.C. § 543 et seq., (the “Federal Act”), divided the delivery of cable television services into two separate rate regulable categories: (i) “basic service” (the lowest service tier which includes the retransmission of local television broadcast signals and any public, educational and governmental channels) (sometimes denominated the “limited basic service” or “B-1” tier) and associated equipment and installation and (ii) cable programming services (“CPS”) (consisting of other television channels) and associated equipment;

WHEREAS, under the Federal Act, the limited basic tier of service was regulated by the “local franchising authority,” and until March 31, 1999, CPS was regulated by the Federal Communications Commission (“FCC” or the “Commission”) upon the filing of a complaint from the local franchising authority to the FCC with regard to a CPS tier rate;

WHEREAS, under the provisions of the New Jersey Cable Television Act (“New Jersey Act”), N.J.S.A. 48:5A-1 et seq., the local franchising authority is the Board of Public Utilities (“BPU” or “Board”);

WHEREAS, under FCC regulations adopted March 30, 1994, 47 CFR §76.900 et seq., a cable operator was permitted to adjust its equipment and installation charges annually by filing with the local franchising authority an FCC Form 1205;

WHEREAS, on October 1, 2002, pursuant to 47 U.S.C. § 543 et seq. and N.J.S.A. 48:5A-1 et seq., Time Warner Cable, Inc. (“Time Warner”), on behalf of its rate-regulated subsidiary, TWFanch-One Co., Inc., later succeeded by Time Warner Cable New York City, LLC (“TWCNYC”), now known as Spectrum New York Metro, LLC (“Spectrum”), filed, on a company-level aggregated basis, an FCC Form 1205 with the Board in Docket No. CR02100723 (the “Form 1205 Filing”) in order to determine regulated equipment and installation rates and charges in Time Warner’s cable television systems;

WHEREAS, on July 8, 2003, Administrative Law Judge William Gural issued an Initial Decision making recommendations regarding, *inter alia*, the equipment and installation rates set forth in Time Warner’s Form 1205 Filing, and the BPU adopted those recommendations in a rate order (the “Rate Order”) dated August 19, 2003;

WHEREAS, on or about September 5, 2003, Time Warner filed an appeal of the Rate Order with the FCC pursuant to section 623(b)(5)(B) of the Communications Act of 1934, as amended, and §76.944 of the Commission’s rules, seeking reversal of the Rate Order (the “FCC Appeal”¹), and whereas only the portion of the appeal regarding equipment and installation rates remains unresolved;

WHEREAS, basic service, equipment, and installation rates for the communities covered by the 2003 rate order were deregulated by orders of the FCC that were adopted and released on August 15, 2008 (DA 08-1917) and May 17, 2010 (DA 10-878);

WHEREAS, Charter Communications, Inc. (“Charter”) acquired Time Warner in a merger (the “Merger”) approved by the Board by an Order Approving Stipulation of Settlement, Docket No. CM15070772, dated March 31, 2016;

WHEREAS, the FCC Appeal remains pending before the Commission; and

WHEREAS, Staff of the Board of Public Utilities (“Staff”), the New Jersey Division of Rate Counsel (“Rate Counsel”), Spectrum and Charter (each a “Party” and collectively, the “Parties”), after engaging in settlement discussions have reached agreement (the “Settlement”) on the disposition of this matter;

NOW, THEREFORE, the Parties hereby agree and stipulate to the following for consideration by the Board:

1. Terms and conditions:
 - a. Monetary credit: Spectrum will pay an aggregate monetary amount of \$750,000 (the “Credit”) that will automatically be credited on a pro rata basis, in monthly installments over a six-month period, to the monthly bills of all Spectrum residential cable customers in New Jersey (where “residential cable customers” is

¹ TWFanch-One, Co., d/b/a Time Warner Cable, Petitioner v. State of New Jersey, Respondent, FCC Docket No. CSB-A-0696 (Sept. 2003).

defined to exclude bulk customers and commercial customers) who had accounts with Spectrum as of October 1, 2020 (the “Eligible Customers”) commencing with the first billing cycle following the Credit Implementation Date, which shall be a date on or about 90 days from the date of approval by the Board of this Stipulation.

b. Equipment in kind—Apple TV Device: Spectrum will offer Eligible Customers one Apple TV device per Eligible Customer account at the discounted rate of \$90.00 per device (compared to the retail price of \$180 per device) (the “Device Offer”). Eligible Customers will have the option of paying for this device on an extended payment plan at the rate of \$3.99 per month over a twenty-three (23) month period. To accept the Device Offer, Eligible Customers must contact Spectrum during the Device Offer Window, which shall begin on a date (the “Device Offer Implementation Date”) approximately 90 days from the date of Board approval of this Stipulation and shall expire 90 days thereafter.

c. Programming in-kind: Charter will offer Basic and Select residential cable customers in New Jersey (excluding bulk customers and commercial customers) who had accounts with Spectrum as of October 1, 2020 (“Eligible Programming Customers”) the opportunity to receive at no charge either (i) HBO for a two-month period (provided that the Eligible Programming Customer is not a Spectrum subscriber to HBO as of the Programming In-Kind Implementation Date, as defined below) or (ii) Showtime for a four-month period (provided that the Eligible Programming Customer is not a Spectrum subscriber to Showtime as of the Programming In-Kind Implementation Date) (collectively, the “Programming Services Offer”). Eligible Programming Customers must contact Charter during the Programming Offer Window, as defined below, to request HBO or Showtime in accordance with the terms of this Programming Services Offer. The free programming will automatically terminate at the end of the two- or four-month period, whichever applies, and customers who wish to continue to receive HBO or Showtime thereafter must contact Spectrum to order the service. To accept the Programming Services Offer, Eligible Programming Customers must contact Spectrum during the Programming Offer Window, which shall begin on a date (“Programming Offer Implementation Date”) approximately 90 days from the date of Board approval of this Stipulation and shall expire 90 days thereafter.

d. Spectrum will provide notice of the Credit, the Device Offer, and the Programming Services Offer to Eligible Customers (and Eligible Programming Customers) by displaying information relevant thereto on a page or pages of their monthly bills (the “Ad Pages”). The Ad Pages will be provided to all Eligible Customers (and Eligible Programming Customers) entitled to receive the respective offer(s) and will explain the respective offer(s), eligibility, important dates, actions needed by the customer, and contact information. Ad Pages regarding the Credit will be provided concurrently with commencement of the Credit. Ad Pages regarding the Device Offer and the Programming Service Offer will be included in customer bills during the month prior to the commencement of the Device Offer Window and Programming Offer Window, respectively (in accordance with customers’ regular billing cycles), and the Company will provide a second follow-

up notice thereafter. The Ad Pages shall constitute adequate notice to customers of the Settlement and its terms for all purposes.

e. Customers who subscribe to HBO or Showtime before or after the Programming Offer Implementation Date shall not be entitled to receive that service as part of the Programming Services Offer. It is further agreed that Eligible Customers (and Eligible Programming Customers) who terminate service during the implementation of the Credit and/or either of the Device and Programming Service Offers shall forfeit any and all subsequent benefits related thereto.

2. The FCC Appeal has been pending before the Commission since September 2003, and the Parties believe that entering into an agreement to resolve the issues related thereto is in the best interest of the Parties and of Spectrum's New Jersey cable television customers.

3. This Stipulation of Settlement resolves all issues raised or which could have been raised by any Party in connection with Time Warner's company-level aggregate FCC Form 1205 filing submitted to the Board in Docket No. CR02100723.

4. The signatories agree that, except as expressly provided herein, this Stipulation of Settlement has been made exclusively for the purpose of this proceeding and that the provisions contained herein, either in total or by specific items, shall not be used against any of the Parties in any other proceeding before the Board or in other forums or jurisdictions, nor shall the contents of this Stipulation of Settlement, either in total or by specific items, by inference, inclusion, or deletion, in any way be considered or used by any other Party as any indication of the position of any Party hereto on any issue litigated or to be litigated in other proceedings. All signatories acknowledge that the terms of this Stipulation of Settlement shall not be effective unless and until approved in total and without modification by the Board.

5. If the Board approves this Stipulation of Settlement without change to any of the terms herein, Charter shall promptly withdraw with prejudice the FCC Appeal.

6. This Stipulation of Settlement contains terms, each of which is interdependent with the others and essential in its own right to the signing of this Stipulation of Settlement. Each term is vital to the agreement as a whole, since the Parties expressly and jointly state that they would not have signed this agreement had any term been modified in any way. Each Party is entitled to certain procedures in the event that any modification is made to the terms of this Stipulation of Settlement, pursuant to which each of the signatory Parties hereto must be given the right to be placed in the position it was in before this Stipulation of Settlement was entered into. Therefore, if any modification is made to the terms of this Stipulation of Settlement, it is essential that each Party be given the option either to modify its own position, to accept the proposed change(s), or to resume the proceedings as if no agreement had been reached.

7. The Parties believe these provisions are fair to all concerned and therefore they are made an integral and essential element of this Stipulation of Settlement. This being the case, all Parties expressly agree to support the right of any other Party to this Stipulation of Settlement to enforce all terms and procedures detailed herein.

CHARTER COMMUNICATIONS, INC. and
SPECTRUM NEW YORK METRO, LLC, f/k/a TIME
WARNER CABLE NEW YORK CITY, LLC, successor to
TWFANCH-ONE CO.

Dated: October 21, 2020

By: /s/ Dennis C. Linken
Dennis C. Linken, Esq.
Scarinci & Hollenbeck, LLC

STEFANIE A. BRAND, ESQ., DIRECTOR
DIVISION OF RATE COUNSEL

Dated: October 21, 2020

By: /s/ Maria Novas-Ruiz
Maria Novas-Ruiz,
Deputy Rate Counsel

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the
Board of Public Utilities

Dated: October 21, 2020

By: /s/ Alex Moreau
Alex Moreau
Deputy Attorney General