

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

Time Warner Cable Inc.,)
)
 Petitioner,)
)
 v.)
)
 Department of Telecommunications and)
 Cable, Commonwealth of Massachusetts,)
)
 Respondent.)

File No. _____

APPEAL OF LOCAL RATE ORDER

Seth A. Davidson
Ari Z. Moskowitz
**Mintz Levin Cohn Ferris
Glovsky and Popeo PC**
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 434-7447

Attorneys for Time Warner Cable

TABLE OF CONTENTS

	<u>Page</u>
BACKGROUND.....	1
ARGUMENT.....	5
I. The DTC Erred in Rejecting TWC’s Explanations for the Changes in the HSC Calculation from the Previous Rate Year	5
II. The DTC Erred in Asserting Jurisdiction Over and Rejecting TWC’s Non-BST Navigator and Additional A/O Service Fees	9
A. The Navigator Service Charge.....	9
B. The A/O Service Fee.....	16
CONCLUSION.....	18

SUMMARY

The instant appeal relates to the November 26, 2014 Rate Order adopted by the Department of Telecommunications and Cable of the Commonwealth of Massachusetts (the “DTC”) with respect to the Forms 1240 and 1205 rate justifications filed by Time Warner Cable Inc. (“TWC” or the “Company”) on or about November 27, 2013 for the Company’s Great Barrington, North Adams, and Pittsfield cable television systems. The Rate Order affirmed TWC’s proposed Form 1240 rates for the basic service tier (“BST”), but rejected and revised TWC’s Form 1205 Hourly Service Charge (“HSC”) calculation and directed TWC to adjust its regulated equipment and installation charges accordingly and to submit a refund plan based on those adjustments. In addition, the Rate Order rejected and set a zero rate for the following two service charges that TWC does not reflect on its rate forms but does itemize on subscriber bills: (i) a charge of \$3.27 for access via enabled set-top boxes to TWC’s optional “Navigator” service (which gives subscribers access to advanced programming guide content and a suite of music channels) and (ii) a \$1.50 “Additional Outlet (“A/O”) Service Fee” charged for each additional set-top box or CableCARD leased from TWC. The DTC clearly erred in rejecting TWC’s proposed HSC calculation and in prescribing a rate of zero not only for the HSC, but also for the Navigator service charge and the A/O Service Fee.

With respect to the HSC, the DTC based its decision on TWC’s failure to provide “requested relevant information” that the DTC claims it needed to approve the increase in the HSC calculated on the current year’s Form 1205 as compared to the previous year’s Form 1205. However, unlike the Form 1240, which builds the maximum permitted BST rate on the basis of changes from one year to the next, the Form 1205 calculates equipment and installation rates de novo, using only the information from the most recent fiscal year. Moreover, the record

establishes that TWC responded to the DTC's inquiries about the changes to its Form 1205 calculations to the best of its ability given the limitations in the information available to it regarding prior Form 1205 calculations.

In particular, TWC explained that the reason that its current year HSC increased as compared to the prior year's HSC was that, in connection with a corporate reorganization, TWC implemented a new centralized accounting system and, accordingly, replaced the division-centric methodology used in the past to create a Company-wide aggregate Form 1205 with one that used accounts kept at the corporate level. This change resulted in TWC being able to recover certain costs that had originally been recorded at the division level and included in the division-centric Form 1205 calculation but that, over time, had become corporate level costs and thus not picked up in recent Form 1205 filings. TWC specifically cited the example of equipment warehousing costs: TWC explained that equipment originally was warehoused and accounted for at the division level, but that the Company had moved to a national warehousing approach whereby those costs were recorded at the corporate level. By moving to an HSC calculation based on corporate level accounts rather than division level accounts, TWC was able to recover its warehousing costs that would not have been included in recent years.

TWC also explained that because it has acquired and sold hundreds of systems over the twenty-plus years since rate regulation took effect, it was unreasonable for the DTC to demand that TWC prove the unprovable: namely that the costs reflected in its current year's Form 1205 (which includes new categories of costs that could not have existed in 1993) had all been unbundled when TWC set its initial regulated service and equipment rates. Indeed, even if TWC had available to it information about the costs included in the original equipment rates of systems acquired over the past twenty years – and such information almost never is available –

maintaining such information over the years would effectively require TWC to maintain two sets of books for the acquired systems, one tracking them as separate entities and one integrating them into TWC's company-wide accounts. The Commission has never required such an approach and it should find that TWC's responses to the DTC were, under the circumstances, reasonable and sufficient to justify TWC's HSC calculation.

With respect to the Navigator service charge and the A/O Service Fee, the DTC erred by demanding that TWC justify rates for services that are not within the DTC's limited regulatory jurisdiction. The DTC may regulate the rates that TWC charges for the BST – the service level that must be subscribed to by all of its subscribers – and for equipment used to receive the BST, even if that equipment is used to receive other non-BST services. However, as the Commission has made clear, there is a distinction between equipment used to receive both BST and non-BST services and the non-BST services accessed via such equipment. The equipment is subject to rate regulation, but the non-BST services received via such equipment is not.

Both the Navigator charge and the A/O Service Fee are non-BST service charges and thus cannot be regulated by the DTC. In the case of the Navigator service, the DTC claims that TWC has failed to establish that the Navigator service is a non-BST charge and that TWC has admitted that the Navigator service is an inherent part of the Company's set-top boxes. In fact, the record demonstrates just the opposite. The Navigator service, which has been made available to subscribers on TWC's systems for years, and has been separately itemized on subscriber bills in some of those systems without any objection from the DTC, gives subscribers access to advanced services that go beyond the simple tuning capability that is inherent in a set-top box. Furthermore, the Navigator service is an optional non-BST service because it is not part of the service that must be paid for and received by every subscriber. There are subscribers who can

and do receive the BST channels without opting for access to the Navigator service by leasing a Navigator service-enabled set-top box. For example some subscribers choose to receive the BST, but not the Navigator service, by directly connecting to a cable ready set or by using a device to tune the BST that does not provide access to TWC's Navigator service, such as a DTA or a third party set-top box such as a TiVo device.

TWC's Navigator service charge is analogous to other charges for non-BST services that the DTC has found are not subject to regulation, such as a DVR service fee. A DVR service fee, like the Navigator service fee, is a charge that is imposed separately from the regulated box and that is considered an optional non-BST charge because subscribers can and do have the option of accessing only the BST without leasing a DVR service-enabled set-top box. The same reasoning applies to TWC's A/O Service Fee. The Commission has recognized that such fees, which are fundamentally an authorization fee for non-BST service on multiple outlets, are not subject to regulation, either as equipment or as part of the BST. Indeed, just last year, the DTC ruled that a Digital Adapter Additional Outlet Service Fee (as well as an HD Service Technology Fee and an HD DVR Service Fee) were not subject to its regulatory authority. Like those fees, the A/O Service Fee, which is only charged to subscribers who opt to receive non-BST service by leasing additional Navigator service-enabled set-top boxes or CableCARDS (used to receive encrypted non-BST services), is a non-BST service fee.

Under the circumstances, the Commission should reverse the DTC's Rate Order insofar as it rejects and recalculates TWC's HSC charge and remand the matter with instructions directing the DTC to approve the HSC as submitted. In addition, the Commission should vacate the portions of the Rate Order that purport to regulate TWC's Navigator service and A/O Service

Fee, making clear that the DTC may not interfere with TWC's imposition of these fees on subscribers who choose to receive non-BST service via equipment leased from TWC.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

Time Warner Cable Inc.,)
)
 Petitioner,)
)
 v.) **File No.** _____
)
 Department of Telecommunications and)
 Cable, Commonwealth of Massachusetts,)
)
 Respondent.)

APPEAL OF LOCAL RATE ORDER

Pursuant to section 623(b)(5)(B) of the Communications Act of 1934, as amended, and section 76.944 of the Commission’s rules,¹ Time Warner Cable (“TWC” or the “Company”), by its attorneys, hereby petitions the Commission to review and reverse the “Rate Order” adopted on November 26, 2014 by the Department of Telecommunications and Cable of the Commonwealth of Massachusetts (“DTC”) insofar as it arbitrarily rejects TWC’s justification for its Hourly Service Charge (“HSC”) and unlawfully orders retroactive refunds and sets a prospective rate of zero for certain unregulated services over which the DTC has no jurisdiction.²

BACKGROUND

On or about November 27, 2013, TWC filed with the DTC FCC Forms 1240 and 1205 justifying TWC’s maximum permitted and operator selected rates for the regulated basic service tier (“BST”) and regulated equipment offered by the Company’s Great Barrington, North Adams, and Pittsfield cable television systems. In the course of its review of TWC’s proposed

¹ 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

² A copy of the Rate Order is attached hereto as Exhibit 1.

rates, the DTC focused its attention principally on TWC's Form 1205. In particular, the DTC's inquiries centered on TWC's Form 1205 HSC calculation and on two monthly charges itemized on TWC's subscriber bills but not reflected on its Form 1240 or Form 1205: (i) a charge of \$3.27 for access via enabled set-top boxes to TWC's "Navigator" service (also known as "The Guide" service) and (ii) an "Additional Outlet (A/O) Service Fee" of \$1.50 charged for each additional set-top box or CableCARD leased from TWC.³ TWC submitted written responses to the DTC's inquiries on May 16, 2014, July 9, 2014 and August 22, 2014. TWC also responded to questions posed by the DTC at a June 12, 2014 evidentiary hearing.⁴

The HSC Calculation. With respect to the HSC, the DTC asked TWC to provide documentation justifying the increase in the HSC calculated on the Company's current Form 1205 as compared to the HSC calculated on the Company's Form 1205 for the previous rate year. The DTC also requested explanations regarding particular line items on TWC's current Form 1205 as compared to those same line items on the Company's Form 1205 for the previous rate year. In response, TWC provided the DTC with detailed explanations concerning the changes in the HSC calculation from the previous year to the current year.

In particular, TWC explained that in prior years, the Company had prepared a national "aggregate" Form 1205 by consolidating the Form 1205s separately created by the various TWC regional divisions. In contrast, starting with Fiscal Year 2013 (the year covered by the current year's Form 1205), TWC calculated its equipment and installation rates on a centralized basis consistent with a new Company-wide accounting system implemented as part of a corporate

³ While the A/O Service Fee is a new charge that was not assessed prior to 2014, the Navigator service has been made available to TWC subscribers for a number of years. In TWC's "Legacy" systems, the fee for the Navigator service was separately itemized on subscriber bills on a "per household" basis. In systems that TWC acquired from Adelphia in 2006, the fee for the Navigator was not separately itemized prior to 2014; rather, it was embedded with the price of a package that included both the BST ("Starter") service and optional digital video programming tiers accessed via a Navigator-enabled set-top box. The Navigator service provides subscribers with an advanced programming guide as well as with a suite of digital music services.

⁴ Copies of the DTC's written inquiries dated April 28, 2014 and TWC's written response dated May 16, 2014 are attached as Exhibit 2A and 2B. A copy of TWC's July 9, 2014 written response to inquiries made by the DTC at the June 12, 2014 evidentiary hearing is attached as Exhibit 3; and, copies of the DTC's August 8, 2014 written inquiries and TWC's August 22, 2014 written responses are attached as Exhibits 4A and 4B. A copy of the transcript of the June 12, 2014 evidentiary hearing is attached as Exhibit 5.

reorganization. Thus, instead of summing a series of divisional Form 1205s as it had in the past, TWC established a corporate level Regulatory Reporting group that prepared a Company-wide Form 1205 based on financial data maintained on a Company-wide, rather than divisional, basis.

As a result of this change in accounting practices and the resulting change in the methodology for preparing an aggregate Form 1205, TWC was able to include in its Form 1205 certain recoverable costs that had been reflected in earlier aggregate Form 1205s but not in more recent versions. TWC also was able to recover new categories of recoverable costs that could not have been unbundled in 1993 but had not been included in recent aggregated Form 1205 filings. In response to requests for more detailed line-by-line information about the differences in the current Form 1205 HSC calculation and the HSC calculation on the previous year's Form 1205, TWC explained that it was not possible to directly compare the current year's Form 1205 calculations to earlier Form 1205 filings on an account-by-account or form-by-form basis because the data needed to make those direct comparisons does not exist. Indeed, because a number of the systems covered by the current year's Form 1205 were acquired after 1993 (the year in which cable operators were first required to calculate cost-based equipment charges), TWC has no way of confirming whether and, if so, to what extent particular accounts and costs were included in the original Form 1205s prepared for those systems. Despite these hurdles, TWC endeavored to provide as much information as it could in response to the DTC's inquiries. To this end, TWC supplied the DTC with detailed explanations of the methodology (including descriptions of percentage-based adjustments made to corporate level accounts) that the Company used in preparing its current Form 1205.

The Navigator Service Charge and the A/O Service Fee. With respect to the itemized charges for TWC's Navigator service and the Company's new A/O Service Fee, the DTC sought explanations as to why these charges were not included on TWC's Form 1205. In its responses, TWC consistently explained that the Navigator is not a piece of equipment or part of a piece of equipment; rather, it is a service that TWC's subscribers can opt to receive by leasing a set-top box on which TWC has installed Navigator service software. Subscribers choosing to use a

Navigator-enabled set-top box have access to a service that includes, *inter alia*, an advanced, interactive programming guide service that goes beyond the simple tuning capability inherent in a set-top box.⁵ TWC further explained that the Navigator service is not subject to the DTC's regulatory jurisdiction because, as an optional service that is not automatically provided to every subscriber, it is not part of the statutorily mandated, rate-regulated BST.

On November 26, 2014, the DTC adopted the Rate Order. The Rate Order approved TWC's Form 1240 BST service rates. However, the DTC concluded that TWC's explanations of its Form 1205 HSC calculation did not provide "requested relevant information" that the DTC needed to approve the HSC.⁶ The DTC thus rejected TWC's HSC calculation and, in its place, approved a substitute HSC that increased the HSC from TWC's previous year's Form 1205 to reflect inflation, but did not allow TWC to recover any increases in its equipment-related costs and expenses. The DTC also ordered TWC to make refunds based on the adjustments to installation and equipment rates attributable to the revised HSC.

The DTC also rejected TWC's itemized Navigator service charge in its entirety, finding that TWC did not "prove that the Navigator is not equipment used to receive the [BST] and had "made no effort to show that its charge for the Navigator is reasonable."⁷ The DTC ordered TWC to set a prospective rate of zero for the Navigator service and to refund subscribers all amounts previously charged for the service.⁸ The DTC also concluded that TWC had failed to demonstrate the reasonableness of the Company's A/O Service Fee and, on the basis of that conclusion, prescribed an A/O Service Fee of zero and ordered TWC to refund all amounts collected as A/O Service Fees.⁹

⁵ The Navigator service also provides subscribers with access to a suite of music channels.

⁶ Exhibit 1 at 7.

⁷ *Id.*

⁸ *Id.* See also Exhibit 1 at 27-28 (ordering TWC to submit a refund plan that included "any charges for the Navigator that [TWC] subscribers in regulated Massachusetts communities have paid to date.")

⁹ *Id.* at 7, 21.

For the reasons stated below, the DTC clearly erred in rejecting TWC's proposed HSC and in prescribing a rate of zero and ordering refunds for the Navigator service and A/O Service Fee. Accordingly, the Commission should reverse and remand the Rate Order with instructions that it approve the HSC and stand down from regulating the Navigator service charge and the A/O Service Fee.

ARGUMENT

I. The DTC Erred in Rejecting TWC's Explanations for the Changes in the HSC Calculation from the Previous Rate Year.

Unlike the regulated rate for the BST, which builds on the prior year's maximum permitted rate calculation, regulated equipment rates are calculated *de novo* each year using Form 1205. While local franchising authorities ("LFAs") may legitimately inquire as to the reason for significant changes from one year's Form 1205 to the next, the LFA may not act arbitrarily by setting the bar for such explanations so high that it is impossible for a cable operator to justify its rates. Yet, that is precisely what the DTC has done in its review of TWC's HSC.

While the DTC has faulted TWC for failing to provide a sufficient explanation for the changes in its HSC calculation from the previous year's Form 1205 to the current year's Form 1205, TWC has in fact responded fully and to the best of its ability to each of the DTC's inquiries. As explained above, TWC has implemented a new centralized accounting system following a corporate reorganization and, consistent with that accounting system, has replaced the division-centric approach previously used in preparing the Company's aggregate Form 1205 with a centralized Form 1205 methodology. In its responses to the DTC, TWC explained in detail how the change in the Company's accounting system and the implementation of the new centralized approach to preparing the Company's Form 1205 resulted in the inclusion of relevant

costs that had not been recovered in recent years under the division-centric approach, as well as the recovery of new categories of costs that would not have been part of the original rate regulation “unbundling” in 1993.

In particular, in its May 16, 2014 response to the DTC’s April 28, 2014 inquiries, TWC described how the centralization of the Company’s accounting at a corporate level in connection with a corporate reorganization “necessitated the use of a new methodology in computing” the Company’s aggregate Form 1205.¹⁰ This new methodology, TWC explained, “captured accounts previously kept at a more local level as well as corporate level accounts that previously were not consistently included” in the Form 1205s that TWC previously created by consolidating data from separate Form 1205s prepared by each division using accounts kept at the division level.

In subsequent written responses to DTC inquiries and in its testimony at the June 12, 2014 hearing, TWC expanded on its explanation of how the adoption of a centralized accounting system and the resultant modification in the way the Company’s aggregate Form 1205 was prepared impacted the current year’s HSC calculation. For example, in its testimony at the June 12, 2014 hearing, TWC explained how, over time, the Company had shifted from warehousing equipment at the division level to a centralized warehousing system. Prior to this shift, the division level warehouse costs would have been included in the Form 1205s used in preparing the Company’s aggregate Form 1205. However, when the Company began accounting for warehousing costs on a national accounting level, those costs were no longer reflected in the divisional Form 1205s or in the aggregate Form 1205s created using the divisional Form 1205s. By using a centralized methodology and data drawn from corporate level accounts in preparing

¹⁰ Exhibit 2B at Response to DTC 1-6. *See also id.* at Responses to DTC 1-7 through 1-11.

the current year's Form 1205, TWC was able once again to recover its warehousing costs.¹¹ In short, what might appear to be an inclusion of new costs in the HSC calculation is, in reality, merely the recovery of costs that were once previously included in the HSC calculation but that had been omitted in recent years because those costs were recorded at the corporate level and not picked up by the division level HSC calculation methodology.

TWC's July 9, 2014 response to the DTC's follow-up inquiries elaborated even further on the categories of corporate level costs that are accounted for in the current year's Form 1205 but that would have been omitted from the HSC calculation in the Form 1205s prepared using the division-centric methodology. These cost categories include "certain technology licensing and maintenance costs; certain generic software costs; maintenance expenses related to set-top boxes; and expenses related to the procurement, inventory storage, and distribution of set-top boxes." Notably, many of these categories reflect costs that did not exist when cable operators first "unbundled" their equipment related costs and expenses. Put another way, there can be no double recovery of the costs of licensing technology and software that did not exist in 1993 when cable systems used analog technology and were far less sophisticated than they are today.

Notwithstanding TWC's repeated efforts to explain the differences between its current Form 1205 HSC calculation and the calculation of the HSC in its previous year's aggregate Form 1205, the Rate Order faults TWC for failing to provide detailed, account-by-account comparisons (including the creation of a Form 1205 for the current year using the old methodology). The DTC also faults TWC for not proving that all of the costs recovered in its current Form 1205 were unbundled in 1993. As indicated, many of the cost categories included in the current Form 1205 did not and could not have existed in 1993, and thus no showing that

¹¹ Exhibit 5 at 23-24.

those costs were unbundled is possible. Moreover, TWC has purchased and sold literally hundreds of cable systems since 1993. For systems acquired after 1993, TWC not only lacks access to twenty-year old unbundling calculations, but also would have had to maintain two separate books in order to keep the acquired system's accounts up-to-date while integrating those systems into TWC's accounting systems. Given the obvious risks that would flow from maintaining two sets of books covering the same systems, it is not surprising that the Commission has never required cable operators to prepare the type of "parallel universe" Form 1205 that the DTC has demanded.

TWC acknowledges that the Commission on occasion has required cable operators to establish that their current Form 1205 calculations reflect the cost-unbundling required when regulated equipment and service rates were first calculated in 1993. However, the fact is that such an interpretation of the rules governing the calculation of equipment rates in general is woefully out-of-date, so much so that compliance is all but impossible in situations such as the one presented here. As indicated above, it simply is arbitrary and capricious for the DTC to reject TWC's HSC calculation on the grounds that TWC cannot prove the unprovable — namely that specific categories of costs and expenses included in TWC's current aggregate Form 1205 were unbundled more than 20 years ago by the various systems whose rates are set by the Company's aggregate Form 1205. TWC did not ignore the DTC's requests for information; to the contrary, it responded to them as fully and completely as it could. The Commission should find that TWC's explanations satisfied its burden and reverse the DTC's order rejecting and recalculating TWC's HSC charge.

II. The DTC Erred in Asserting Jurisdiction Over and Rejecting TWC's Non-BST Navigator and Additional A/O Service Fees.

A. The Navigator Service Charge.

Section 623 of the Communications Act, together with the Commission's implementing rules, limit a local franchising authority's rate regulation jurisdiction to the rates charged by a cable operator for the BST (*i.e.*, the package of services that includes broadcast signals and that all subscribers must receive as a condition of subscribing to any other services) and for equipment used to receive the BST (even if the subscriber also uses that equipment to receive services other than those received by all subscribers as part of the BST).¹² The Commission's decisions have repeatedly emphasized the distinction between charges for services and charges for equipment and have clarified that if a service is not part of the BST received by every subscriber, it is not subject to regulation even if access to that service is associated with a regulated converter that also is used to receive the BST.¹³

The DTC rejected TWC's Navigator service charge notwithstanding the fact that TWC has been itemizing a fee for the Navigator service on subscriber bills in the Company's Legacy systems in Massachusetts for a number of years without any objection from the DTC. The separately itemized Navigator fee rejected by the DTC is and always has been a charge for service – including a suite of music channels and an advanced programming guide – not equipment. Moreover, the Navigator service is not and never has been a part of the BST received by all subscribers. There are subscribers who can and do choose to receive the

¹² 47 U.S.C. § 543(a)(2)(A); 47 C.F.R. § 76.923(a).

¹³ See, e.g., *Comcast Cablevision of Mt. Clemens, Inc.*, 10 FCC Rcd 11046, 11048 (MB 1995) (“The Commission's rules state that, because per-channel and per-program offerings are not regulated under the 1992 Cable Act, a cable operator is free to offer such programming at rates that vary depending on the number of outlets that are hooked up to receive those services.”). See also *Comcast Cable Communications, LLC (North Metro)*, 29 FCC Rcd 2885 (MB 2014) (“*Comcast (North Metro)*”) (acknowledging distinction between regulated equipment used to receive non-BST services and the unregulated non-BST services themselves).

statutorily mandated BST without receiving or paying for the Navigator service. For example, subscribers who can and do receive the BST by connecting directly to a cable-ready television do not receive or pay for the Navigator service. Other subscribers can and do receive the BST by using external devices (such as a TWC-provided digital terminal adapter (“DTA”) or a TiVo box acquired from a third party retailer) that do not provide access to the Navigator service. Because these BST subscribers have opted not to lease the equipment needed to get the Navigator service, they do not have access to either the suite of music channels that are included with the Navigator service or to the content and functionality of the Navigator service’s advanced programming guide.

Despite the fact that the Navigator service is an optional, unregulated, non-BST service, and despite the fact that in the past the DTC made no effort to regulate the Navigator service where it was separately itemized, the Rate Order faulted TWC for failing to justify the reasonableness of the Navigator service charge as part of the Form 1205 rate for the set-top converter boxes used by subscribers to access the Navigator service.¹⁴ In other words, the DTC has for the first time taken the position that (1) TWC’s Navigator charge is an equipment charge, not a charge for an unregulated, non-BST service and (2) TWC should have bundled the Navigator service charge and the charge for set-top boxes used to receive the Navigator service together at a single, regulated price.

The DTC’s findings and its rejection of the Navigator charge are unsupported by the record and contrary to Commission precedent.

Turning first to the relevant legal principles, in *Comcast Cable Communications, LLC (North Metro)*, the Media Bureau clarified the distinction between regulated equipment and

¹⁴ Exhibit 1 at 25-26.

unregulated services received using that equipment.¹⁵ That dispute centered on Comcast's establishment of a bundled charge that included certain unregulated non-BST services (*i.e.*, an "HD Technology Fee," "HD DVR Service Fee," and "Digital Adapter Additional Outlet Service Fee") as well as the equipment used to receive those services.¹⁶ In upholding the LFA's decision requiring Comcast to unbundle and itemize the regulated equipment charge separately from the charges for unregulated non-BST services provided over the equipment, the Bureau reaffirmed that non-BST services are unregulated even where they are provided by means of a regulated device (*i.e.*, a device used to receive both the BST and non-BST services).¹⁷

As indicated above, the DTC has not in the past objected to the itemization of the Navigator service fee separate from the equipment used to access that service on TWC's Legacy systems, nor has it previously objected to the bundling of the charge for the Navigator service with the price charged in systems acquired by TWC from Adelphia for a package of services that included both digital non-BST services accessed using a Navigator service-enabled set-top box. Moreover, TWC's decision to adopt a uniform pricing approach whereby, starting in 2014, all of its systems would separately itemize the Navigator service charge on a per box basis squarely conforms to the principles articulated by the Bureau in the *Comcast (North Metro)* decision.¹⁸

TWC made precisely this point in its August 22, 2014 written response to the DTC's request for information regarding the Navigator charge.¹⁹ However, in the Rate Order, the DTC dismissed the relevance of the *Comcast (North Metro)* unbundling requirement, claiming that

¹⁵ *Comcast (North Metro)*, at paras. 13-16.

¹⁶ *Id.* at para. 13.

¹⁷ *Id.* at para. 15.

¹⁸ Thus, subscriber bills in both Legacy and former Adelphia systems now show a charge of \$6.98 for leasing a set-top box (equal to the maximum permitted rate for a set-top box calculated on TWC's Form 1205) and a separate charge for "The Guide" (*i.e.*, the Navigator) service of \$3.27 for each box that provides access to the Navigator service.

¹⁹ *See* Exhibit 4B at 2.

TWC had “not carried its burden of proving that the Navigator service was a non-basic service tier service.”²⁰ The record clearly refutes the DTC’s position.

TWC’s oral testimony at the June 12, 2014 evidentiary hearing and its July 9, 2014 and August 22, 2014 written responses to the DTC’s information requests all clearly stated that the Navigator service is not a required part of the statutorily-mandated BST provided to all subscribers nor is it a part of the equipment used to access the Navigator service. Rather, as TWC explained, the Navigator service is an optional service and the rate charged for that service by TWC is not subject to DTC regulation. For example during the June 12, 2014 evidentiary hearing, TWC’s witnesses described the Navigator service as “a program that goes through the box...so that a customer can go in and pick channels. It’s not a part of the box itself.”²¹ TWC expanded on this point in its follow-up written submission dated July 9, 2014, stating that “The [N]avigator is not part of the regulated equipment rate because it is a service whose costs are not included in computing the Form 1205 equipment calculation; and it is not part of the regulated ‘basic service’ rate because it is not a basic service provided to every subscriber.”²² And in its further response to the DTC on August 22, 2014, TWC again clearly explained that the Navigator service “is optional for basic tier customers” and thus not a part of the BST and is not subject to regulation.²³

The DTC’s explanation for disregarding these statements is that, during the June 12, 2014 hearing, a TWC witness testified that the Navigator service “goes with every box because every box....has to have a Navigator attached to it to use it.”²⁴ According to the DTC, TWC also

²⁰ Exhibit 1 at note 12.

²¹ Exhibit 5 at 21-22.

²² Exhibit 3 at 5.

²³ Exhibit 4B. at 2.

²⁴ Exhibit 1 at 23.

admitted at the hearing that the Company's converter boxes are "pretty much useless" without the Navigator service and that the Navigator service is "integral to the function of the converter box for the basic service tier."²⁵ However, the Rate Order has taken TWC's responses regarding the Navigator service out of context and thus distorted their meaning.

First, the DTC itself acknowledges that at the June 12, 2014 evidentiary hearing TWC testified that "the Navigator is not a component of the box itself" but rather is a software program that allows the subscriber to use the box to access, *inter alia*, an advanced program guide service.²⁶ TWC also established at the hearing that the Navigator service was not part of the BST service that all subscribers receive. For example, TWC testified that subscribers who use a DTA rather than a box to receive BST do not get the Navigator service.²⁷ While not expressly cited at the hearing, other examples of subscribers who can and do access the BST channels without having or using the Navigator service include subscribers who connect directly to a cable-ready set without any external device or those that use a device supplied by a third party, such as a TiVo box, that does not contain the Navigator service-enabling software and thus does not provide the subscriber with access to the Navigator service's suite of digital music channels and advanced programming guide content and functionality.

Second, it was not TWC's witness that suggested that the Company's boxes were "pretty much useless" without the Navigator service – it was Mr. Mael of the DTC.²⁸ TWC's response to Mr. Mael, read in context, indicates merely that the Navigator service's advanced program guide and interactive tuning functionality would not be available to subscribers if they did not

²⁵ *Id.* at 23-24.

²⁶ *Id.* at 23.

²⁷ Exhibit 5 at 22.

²⁸ *Id.* at 22-23.

use a Navigator service-enabled box, not that a Navigator-enabled device is necessary for subscribers to receive the BST channels.²⁹ The DTC mischaracterizes TWC's August 22, 2014 statement that "the ability to receive and tune different channels" is an "inherent" function of the converter box as an admission that BST subscribers have no ability to tune different channels without the Navigator.³⁰ In fact, TWC was making the exact opposite point, namely that the ability to tune channels is indeed an inherent function of any converter box but the Navigator provides subscribers access to a separate service consisting of, *inter alia*, advanced interactive tuning capabilities and programming guide content beyond the simple tuning and reception functionality that is otherwise inherent in a converter.³¹

In short, whatever confusion the DTC might have had regarding the proper classification of the Navigator service after the June 12, 2014 evidentiary hearing was clarified by TWC's two subsequent written statements. Those statements made it clear that the Navigator service is an optional non-BST service and not a part of the BST itself or a regulated piece of equipment (or part of a regulated piece of equipment). The DTC faults TWC for failing to state that any BST customers use a digital converter box without the Navigator.³² However, as TWC explained, "it is possible for a customer to use a converter [to receive BST service] without a [N]avigator service, but it is not possible for customer to use the [N]avigator service without a converter."³³

To explain in slightly different terms: BST subscribers who do not want TWC's Navigator service can choose to receive the BST without leasing a set-top box from TWC.

²⁹ *Id.* at 23 (testimony of TWC indicating that subscribers can receive service with a DTA even though those subscribers would not have the Navigator service).

³⁰ Exhibit 1 at 24.

³¹ As indicated above, the Navigator service also gives subscribers access to a suite of digital music services.

³² Exhibit 1 at 24.

³³ Exhibit 4B at 2.

However, if a BST subscriber wants to receive TWC's Navigator service's suite of digital music channels and advanced programming guide content and functionality, the subscriber needs to lease a Navigator service-enabled set-top box. Since the box used to receive the Navigator service also is used to receive the BST, the box itself is a Form 1205 regulated piece of equipment. However, that does not make the non-BST services that are accessed using the box, including the Navigator service, subject to regulation.

In light of the foregoing, the DTC has no more authority to demand that TWC justify its Navigator service charge on Form 1205 (or to require that the Navigator charge be justified on Form 1240 as a part of the system's BST charge) than it would have to make such demands with respect to any other non-BST service. For example, BST subscribers who want DVR service typically lease a DVR-enabled set-top box and pay a separate DVR service fee. The box charge is regulated because the box is used to receive the BST as well as to record programming. However, as the Massachusetts Cable Television Division (now part of the DTC) recognized in 2004, the optional DVR service is not a BST service and the fee charged for DVR service is not subject to regulation merely because a BST customer can access a cable company's DVR service via functionality and capability installed on a regulated piece of equipment.³⁴ The exact same reasoning is applicable to the Navigator service.

The distinctions between regulated BST service, unregulated non-BST service and regulated equipment were addressed by the Commission in the *Comcast (Irving)* case which held that an LFA could not require Comcast to provide a cost justification for a digital additional outlet charge that was charged to customers who used the additional outlet to receive a non-BST

³⁴ See *Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Form 1205 Filed by Adelphia Cable Communications, Inc. Proposing a Monthly Lease Rate for Digital Video Recorders*, Rate Order, Mass. Dep't of Telecomms. & Energy, Cable Television Div., CTV 03-8, at 2 (2004), available at <http://www.mass.gov/ocabr/docs/dte/catv/orders/ctv038fnl.pdf> ("DVR service is an unregulated service and thus, the Cable Division lacks jurisdiction over the rate charged for the service").

service as well as the BST.³⁵ That charge, like a DVR service fee or the Navigator service charge, was a charge for service, not equipment. Following that precedent, the Commission must reverse the DTC's Rate Order insofar as it seeks to regulate the charge that TWC has established for the optional Navigator service separate from the charge for the regulated equipment that subscribers use to access that optional service; at very least, the Commission should clarify that the DTC's order is overbroad insofar as it would prevent TWC from charging non-BST customers the Navigator service fee and would require TWC to refund the Navigator service fee paid by subscribers who receive non-BST service.

B. The A/O Service Fee.

While TWC had not previously charged subscribers an A/O Service Fee, such fees are well known within the cable industry. As explained in a 2005 Bureau order, additional outlet service fees are not charges to recover the cost of equipment but rather are "fundamentally a service authorization fee" for the reception of non-BST service on multiple outlets.³⁶ Indeed, the very name of TWC's A/O Service Fee indicates that it is a charge for service, not equipment. The A/O Service Fee is charged for the service received via each additional set-top box or CableCARD that a subscriber leases in order to receive not only the BST but also other optional services offered by TWC (including, for example, other video services and/or the Navigator service). Subscribers receiving BST on multiple sets through direct connections to those sets, or via a DTA or third party navigation device, are not charged the A/O Service Fee.³⁷

³⁵ See *Comcast Cablevision of Indiana/Michigan/Texas, Inc. (Irving, TX)*, 19 FCC Rcd 10628 (MB 2004). See also *Comcast Cablevision of Dallas, Inc.*, 19 FCC Rcd 22687 (MB 2004); *Comcast Cablevision of Mt. Clemens, Inc.*, 10 FCC Rcd 11046 (1995).

³⁶ *Century Enterprise Cable Corporation*, 20 FCC Rcd 14511 (MB 2005).

³⁷ The A/O Service Fee is charged to subscribers who use multiple CableCARDS to receive service on multiple sets. Because BST is unencrypted in TWC's Massachusetts' systems, those subscribers only need CableCARDS if they are receiving more than BST service.

Thus, the DTC lacks authority to demand a cost justification for the A/O Service Fee for essentially the same reason that the DTC lacks the authority to regulate the Navigator Service charge – because the A/O Service Fee is neither an equipment charge nor a charge to receive the BST.³⁸ The Rate Order nonetheless seeks to deny TWC the right to collect this unregulated fee because TWC did not provide a written response to the DTC’s August 9, 2014 request that TWC state whether BST customers are charged the A/O Service Fee, identify where on its rate forms TWC justifies this fee, and state whether programmers charge TWC on a per subscriber or per outlet basis.³⁹

TWC should not be penalized for not responding to the DTC’s request for information that the DTC already had to know was irrelevant to its inquiry. That the DTC knows what an A/O Service Fee is and that it is not subject to its regulatory authority is clear given that, in 2013, the DTC expressly held that it lacked the authority to review an HD Additional Outlet Service Fee charged by Comcast, ruling that it was an unregulated service charge, not an equipment charge.⁴⁰ The DTC has offered no explanation for not following that precedent. In any event, *assuming arguendo* that the DTC could justify distinguishing TWC’s A/O Service Fee from Comcast’s HD Additional Outlet service fee, the DTC’s jurisdiction still would be limited to ordering refunds to subscribers who paid the A/O Service Fee but did not receive any service other than the BST. The DTC may not interfere with TWC’s imposition of an A/O Service Fee on subscribers who lease multiple set-top boxes (or CableCARDS) to receive non-BST services.

³⁸ See cases cited at note 13, *supra*.

³⁹ Exhibit 1 at 19-21.

⁴⁰ See *Petition of Comcast Cable Commc’ns, LLC to Establish and Adjust the Basic Service Tier Programming, Equip., and Installation Rates for Communities in Mass. Served by Comcast Cable Commc’ns, LLC that are Currently Subject to Rate Regulation*, Rate Order, Mass. Dep’t of Telecomms. & Cable, 12-2, at 16 (2013), available at <http://www.mass.gov/ocabr/docs/dtc/dockets/12-2/finalorder.pdf>.

CONCLUSION

For the reasons stated above, the Commission should reverse the DTC's Rate Order insofar as it rejects TWC's HSC calculation and prescribes a rate of zero for TWC's Navigator service and A/O Service Fee and orders refunds of Navigator service charges and A/O Service Fees collected from subscribers who receive non-BST service.

The undersigned verifies that he has read this Appeal and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact, is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and is not interposed for any improper purpose.

Respectfully submitted,

~~TIME WARNER CABLE INC.~~

By:



Seth A. Davidson
Ari Z. Moskowitz

Mintz Levin Cohn Ferris Glovsky and Popeo PC
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 434-7447

Its Attorneys

December 29, 2014

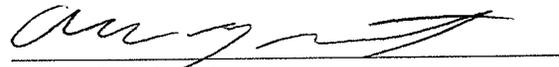
CERTIFICATE OF SERVICE

I, **Ari Z. Moskowitz**, do hereby certify that a copy of the foregoing Appeal of Local Rate Order was served on the following by first class mail, postage prepaid, this 29th day of December, 2014.

Sara J. Clark
Secretary
Massachusetts Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

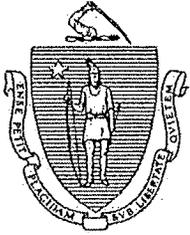
Karen Charles Peterson, Commissioner
Kalun Lee, Acting General Counsel
Karlen Reed, Director, Competition Division
Massachusetts Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

Katie Costello
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554


Ari Z. Moskowitz

**Mintz Levin Cohn Ferris Glovsky and
Popeo PC**
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 434-7379

EXHIBIT 1



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-10

November 26, 2014

Petition of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams, and Pittsfield Systems.

RATE ORDER

APPEARANCES:

John E. Fogarty, Esq.
Vice President & Assistant Chief Counsel
Time Warner Cable Inc.
60 Columbus Circle
New York, NY 10023
FOR: TIME WARNER CABLE INC.
Petitioner

I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves Time Warner Cable Inc.’s (“Time Warner” or “Company”) proposed Maximum Permitted Rates (“MPR”) and Operator Selected Rates (“OSR”) for basic service tier programming for the Great Barrington, North Adams, and Pittsfield systems. The Department rejects Time Warner’s proposed installation and equipment rates for the basic service tier.

II. PROCEDURAL HISTORY

Time Warner filed its Federal Communications Commission (“FCC”) Forms 1240 and Form 1205 with the Department on November 27, 2013, proposing to establish the MPRs and the Company’s OSRs for equipment, installation, and basic service tier programming (“Petition”).¹ See Ex. 1; Ex. 2; Ex. 4; Ex. 5. In its Forms 1240, Time Warner proposed increased MPRs and OSRs for its monthly basic service tier programming in the Great Barrington, North Adams, and Pittsfield systems. Ex. 2; Ex. 4; Ex. 5. Time Warner proposed that the new rates become effective on March 1, 2014. Ex. 2; Ex. 4; Ex. 5. In its Form 1205, Time Warner proposed to decrease the MPR and its OSR for its remote control, and proposed to increase the MPRs and its OSRs for all other equipment and for all installation charges. See Ex. 1.

On April 28, 2014, the Department issued its First Set of Information Requests to Time Warner. Time Warner filed its responses on May 19, 2014. The Department held a public and evidentiary hearing on Time Warner’s Petition on June 12, 2014, during which it issued five

¹ Citations in this Order to Time Warner’s Form 1205 are to “Ex. 1.” Citations to Time Warner’s revised Form 1240 for the Great Barrington system (filed on May 19, 2014) are to “Ex. 2.” Citations to Time Warner’s revised Form 1240 for the Pittsfield system (filed on May 19, 2014) are to “Ex. 4.” Citations to Time Warner’s revised Form 1240 for the North Adams system (filed on November 14, 2014) are to “Ex. 5.” Citations to the public and evidentiary hearing Transcript of Record are to “Tr. at [page].” Citations to Time Warner’s responses to the Department’s Information Requests are to “IR 1-1” through “IR 1-16.” Citations to Time Warner’s responses to Record Requests the Department issued at the evidentiary hearing are to “RR-1” through “RR-5.”

Record Requests. Time Warner filed its responses to the Department's Record Requests on July 10, 2014. On August 8, 2014, the Department requested additional information from Time Warner regarding (1) Time Warner's proposed charge for the "Navigator," (2) Time Warner's proposed hourly service charge, and (3) Time Warner's proposed Additional Outlet (A/O) Service Fee. Letter from Sean M. Carroll, Hearing Officer, Dep't, to John E. Fogarty, Esq., Vice President & Assistant Chief Counsel, Time Warner (Aug. 8, 2014) ("Hearing Officer Letter"). Time Warner replied on August 22, 2014. Letter from John E. Fogarty, Esq., Vice President & Assistant Chief Counsel, Time Warner, to Sean M. Carroll, Hearing Officer, Dep't (Aug. 22, 2014) ("Fogarty Letter"). The evidentiary record includes Time Warner's exhibits,² Time Warner's responses to the Department's Information Requests, the public and evidentiary hearing transcript, Time Warner's responses to the Department's five Record Requests, and the Fogarty Letter.

III. REVIEW OF TIME WARNER'S FCC FORMS 1240

On its Forms 1240, Time Warner proposed increasing its MPRs and OSRs for its basic service tier programming for the Great Barrington, North Adams, and Pittsfield systems. Ex. 2; Ex. 4; Ex. 5. The Department determines that Time Warner's Forms 1240 were prepared in compliance with federal law, and the Department approves Time Warner's proposed basic service tier programming rates. *See* 47 C.F.R. § 76.922(a).

Form 1240 allows a cable operator to update annually its basic service tier programming rates to account for inflation, changes in the number of regulated channels, and changes in external costs, including programming costs, copyright costs, and franchise related costs. *Id.* § 76.922(e). So that rates can be adjusted on Form 1240 for projections in external costs, or for

² Time Warner's exhibits include Time Warner's FCC Forms 1240, Time Warner's FCC Form 1205, Time Warner's proof of cablecasting, and Time Warner's proof of publication of the hearing notice.

projected changes to the number of regulated channels, the cable operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. *Id.* § 76.922(e)(2)(ii)(A), (iii)(A). Projections involving copyright fees, retransmission consent fees, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *Id.* § 76.922(e)(2)(ii)(A).

The FCC's rate regulations establish the standard under which the Department must review rate adjustments on the FCC Form. *Id.* § 76.922(a). Specifically, the FCC directs local rate regulators, such as the Department, to ensure that the approved rates comply with the Communications Act of 1934, as amended ("Communications Act"), and do not exceed the maximum permitted charges calculated by the FCC's rate forms. *Id.* The Department may accept basic service tier rates that do not exceed the approved maximum permitted charge as determined by federal regulations. *Id.* § 76.922(c). The Department only approves rates it deems reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, §§ 2, 15; 47 C.F.R. § 76.937(d)-(e). A cable operator has the burden to demonstrate that its proposed rates for basic service tier programming comply with Section 623 of the Communications Act. 47 U.S.C. § 543; *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Report & Order & Further Notice of Proposed Rulemaking*, FCC 93-177, ¶ 128 (rel. May 3, 1993) ("1993 FCC Rate Order"); 47 C.F.R. § 76.937(a).

In addition, the FCC permits cable operators to report projected costs, including costs associated with programming, that they believe are reasonably certain and reasonably quantifiable. *Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Report & Order & Further Notice of*

Proposed Rulemaking, FCC 95-397, ¶¶ 72-73 (rel. Sept. 22, 1995). In particular, the FCC has built into its Form 1240 a true-up mechanism to account for actual costs that vary from those Projected Period estimates.³

Time Warner's proposed MPRs of \$20.00 for the Great Barrington system, \$27.19 for the North Adams system, and \$28.83 for the Pittsfield system are reasonable. *See* Ex. 2; Ex. 4; Ex. 5. Time Warner initially included certain FCC regulatory fees in its Forms 1240 True-Up Period in error. *See* IR 1-1. Acknowledging the error, Time Warner re-filed its Forms 1240 removing the fees from its True-Up Period. *See id.* This adjustment reduced each of Time Warner's MPRs for basic service tier programming, which were still above Time Warner's OSRs for the three systems. *See id.* Additionally, there were discrepancies in Time Warner's subscriber counts between the previous year's Form 1240 and this year's Form 1240 for the North Adams system. *See* IR 1-4. Time Warner stated that it had inadvertently included data for Cheshire, an unregulated community, in the previous year's Form 1240 for the North Adams system. *Id.* Time Warner filed an amended Form 1240 for the North Adams system, correcting the error by removing the subscribers in the unregulated community. Ex. 5. This correction removed the true-up associated with the unregulated community and resulted in a slight reduction of the MPR Time Warner calculated for the North Adams system in the Form 1240 the Company filed on July 10, 2014. *See id.*; RR-2. The resulting MPR is still higher than Time Warner's OSR for the

³ The true-up segment includes the compensation for overcharges or undercharges which have occurred during the True-Up Periods. The purpose of the true-up process is to compare the revenue a cable operator collected during the True-Up Period with the amount the operator should have been able to collect. If the sum collected is less than what should have been collected, then the operator is allowed to collect the difference during later rate periods. Conversely, if the sum collected exceeds the amount that should have been collected, then the operator must lower its rates in future rate periods to compensate subscribers for the difference. *Instructions for FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services* at 5 (July 1996).

North Adams system. *See* Ex. 5. The Department finds that Time Warner appropriately amended its accounting for the North Adams system.

The Department finds that Time Warner's FCC Forms 1240, as revised, are reasonable and are prepared in accordance with FCC regulations. *See* 47 U.S.C. § 543; G.L. c. 166A, §§ 2, 15; 47 C.F.R. § 76.937(d)-(e). The Department therefore approves the amended Forms 1240 that Time Warner submitted on May 19, 2014, for the Great Barrington and Pittsfield systems, and on November 14, 2014, for the North Adams system.

IV. REVIEW OF TIME WARNER'S FCC FORM 1205

The Department determines that Time Warner's Form 1205 was not prepared in compliance with federal law, and the Department rejects Time Warner's proposed basic service tier equipment and installation rates. *See* 47 C.F.R. § 76.923. The Department directs Time Warner to file a refund plan in accordance with this Order. *Id.* § 76.942.

Form 1205 establishes rates for installations and equipment based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equip. & Installation* (July 1996). A cable operator prepares Form 1205 on an annual basis using information from its previous fiscal year. *Id.* Subscriber charges established in a Form 1205 may not exceed charges based on actual costs as determined in accordance with the FCC's regulations. *See* 47 C.F.R. § 76.923(a)(2). The cable operator bears the burden of proof to demonstrate that its proposed rates for installations and equipment comply with Section 623 of the Communications Act and the FCC's regulations. *See* 47 U.S.C. § 543; *1993 FCC Rate Order*, ¶ 128; 47 C.F.R. § 76.937(a). The FCC found that placing the burden on the cable operator is appropriate because the cable operator "possesses the factual information necessary for such a demonstration." *1993 FCC Rate Order*, ¶ 128. Thus, to meet its burden, the cable

operator must provide factual information demonstrating that its rates comply with the Communications Act and FCC regulations. *See id.*; 47 C.F.R. §§ 76.937(a), (d), 76.939. Put another way, a cable operator that does not attempt to demonstrate the reasonableness of its rates does not carry its burden of proof. *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation Buy Through Prohibition*, MM Docket Nos. 92-262, 92-266, *Third Order on Reconsideration*, FCC 94-40, ¶ 84 (rel. Mar. 30, 1994) (“*FCC Third Rate Order*”); *see also In re Comcast Cablevision of Dallas, et al.*, CSB-A-0698, et al., DA 04-3618, *Order on Reconsideration*, ¶ 12 (rel. Nov. 18, 2004) (“*FCC Dallas Order*”) (finding that a cable operator did not meet its burden of proof when it “failed to provide information that the franchising authority requested and reasonably believed was necessary for its evaluation of the cable operator’s case”).

Upon receiving a proposed increase in equipment and installation rates, the Department must make a determination as to whether the cable operator met its burden, as well as whether the rates are reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. §§ 76.933, 76.937(d). The Department may make information requests of the cable operator that the Department reasonably believes is necessary for its evaluation of the operator’s rates. *See FCC Dallas Order*, ¶ 12. If the Department finds that the cable operator failed to provide complete information in good faith, it may find the operator in default and, “using the best information available, enter an order finding the cable operator’s rates unreasonable and mandating appropriate relief, as specified in §§ 76.940, 76.941, and 76.942.” 47 C.F.R. § 76.937(d). Whenever the Department disapproves a request for a rate increase, it must issue a written decision to that effect. *Id.* § 76.936.

In this proceeding, the Department reviews Time Warner's Form 1205 for the fiscal year ending September 30, 2013. *See* Ex. 1. In its Form 1205, the Company proposed to decrease its MPR and OSR for remote controls, but to increase its MPRs and OSRs for all other equipment and installation rates. *See id.*

The Department finds that Time Warner has not met the burden of proving that its Form 1205 and proposed rates therein comply with applicable law. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.923. First, Time Warner did not provide requested relevant information about its proposed hourly service charge the Department needed to approve such a charge. *See, e.g.,* RR-5, Fogarty Letter at 2-6. Second, Time Warner did not provide requested relevant information the Department needed to approve its proposed Additional Outlet (A/O) Service Fee. *See* Fogarty Letter at 7. Finally, Time Warner has not met its burden of proving that the Navigator is not equipment used to receive the basic service tier. Moreover, Time Warner made no attempt to show that its charge for the Navigator is reasonable. Accordingly, the Department finds that Time Warner is in default, and using the best information available: finds that Time Warner's proposed hourly service charge, Additional Outlet (A/O) Service Fee, and fee for the Navigator are unreasonable; prescribes an hourly service charge for Time Warner; and prescribes a rate of zero for Time Warner's Additional Outlet (A/O) Service Fee and the Navigator. The Department addresses each in turn.

A. Proposed Hourly Service Charge

Time Warner proposed increasing its hourly service charge for installations and equipment but did not provide the Department with requested information needed to approve that increase. The Department thus finds Time Warner in default and, using the best information available, prescribes an hourly service charge of \$60.32.

1. *Time Warner failed to comply with the Department's requests for relevant information in regards to the Company's proposed hourly service charge*

A cable operator bears the burden of demonstrating that its proposed equipment rates comply with FCC rules. *See 1993 FCC Rate Order*, ¶ 128; 47 C.F.R. § 76.937(a). In making such a demonstration, the operator “shall comply with franchising authorities’ . . . requests for information, orders, and decisions.” 47 C.F.R. § 76.939. Further, “[a]n operator failing to comply with a reasonable data request in a timely fashion or failing to provide complete information in good faith does so at the risk of being found in default and having a rate prescribed on the basis of the best information available to the franchising authority.” *In re Comcast Cablevision of Detroit, Inc.*, CSB-A-0615, DA 00-2748, *Memorandum Opinion & Order*, ¶ 3 (rel. Dec. 7, 2000) (“*FCC Detroit Order*”); *see also In re TCI TKR of Houston, Inc.*, DA 96-2105, *Consolidated Memorandum & Order*, ¶ 13 (rel. Dec. 13, 1996) (“The determination of whether the cable operator’s proposed [hourly service charge] is reasonable is an issue left to the discretion of the local franchising authority.”); 47 C.F.R. § 76.937(d) (stating that upon a finding of default, a franchising authority may also prescribe a rate reduction and a refund).

Time Warner used a new methodology in compiling its 2013 Form 1205, choosing to include certain corporate-level costs. IR 1-6; Tr. at 23-24; RR-5. Time Warner’s new methodology resulted in a proposed 66% increase—from \$59.15 to \$97.90—in the Company’s hourly service charge.⁴ *Compare* Ex. 1, with Time Warner 2012 Form 1205. Time Warner’s

⁴ Since 2009, Time Warner’s average annual increase in its hourly service charge was 4.2%. *See Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 12-10, Time Warner Form 1205 (filed on Dec. 3, 2012) (“Time Warner 2012 Form 1205”) (establishing an hourly service charge of \$59.15); *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 11-15, Time Warner Form 1205 (filed on Nov. 2, 2011) (“Time Warner 2011 Form 1205”) (establishing an hourly service charge of \$58.49); *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 09-11, Time Warner Form 1205 (filed on July 12,

proposed increase prompted the Department to request information from the Company so that it could adequately analyze whether the charge was reasonable and based on actual costs. *See In re TCI of Richardson, Inc.*, File No. CSB-A-0379, et al., DA 99-1408, *Memorandum Opinion & Order on Reconsideration*, ¶¶ 23, 24 (rel. July 20, 1999) (“*FCC Richardson Order*”) (affirming that, although the magnitude of a rate increase is not dispositive of reasonableness, increases of significant magnitude “raise a question” and “may be a reason to closely examine supporting information”); 47 C.F.R. § 76.923(a)(2). The Department’s concerns included whether Time Warner’s new methodology would result in double recovery. Specifically, the Department was concerned that costs that Time Warner now assigned to its equipment basket were already included in its program service rates since those costs were not part of the unbundling Time Warner conducted pursuant to the *1993 FCC Rate Order*. Tr. at 26-28; *see also In re Jones Commc’ns of Ga./S.C., Inc.*, CSB-A-0594, CSB-A-0596, DA 04-2448, *Memorandum Opinion & Order*, ¶ 10 (rel. Aug. 4, 2004) (“*FCC Jones Order*”) (“Cable operators are not allowed to restructure equipment costs recovered through regulated BST rates without making an appropriate adjustment.”);⁵ *In re TCI Cablevision of St. Louis, Inc.*, DA 97-2099, *Memorandum Opinion & Order*, ¶¶ 18-20 (rel. Sept. 29, 1997) (“*FCC TCI-SL Order*”) (affirming a franchising authority’s rejection of this practice because it would result in double recovery for the cable operator); *In re TCI Cablevision of Nev., Inc.*, DA 96-1753, *Consolidated Order*, ¶ 14 (rel. Oct. 30, 1996) (“*FCC Nevada Order*”) (confirming that the proper inquiry is not whether claimed

2010) (“Time Warner 2010 Form 1205”) (establishing an hourly service charge of \$55.85); *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 08-14, Time Warner Form 1205 (filed on July 30, 2009) (“Time Warner 2009 Form 1205”) (establishing an hourly service charge of \$52.32).

⁵ In its *FCC Jones Order*, the FCC remanded the case to the franchising authority because it was unclear whether costs that Jones Communications included in its equipment basket were previously included as programming services charges. *FCC Jones Order*, ¶ 10. Here, the Department specifically raised this concern to Time Warner regarding its corporate costs, but as discussed in this Order, Time Warner provided insufficient evidence to show that the Company did not double count these costs. Tr. at 26-28.

costs are bona fide, but whether such costs were claimed when the cable operator initially unbundled its equipment rates); *1993 FCC Rate Order*.

The Department made several attempts to obtain information from Time Warner sufficient for the Department to approve the Company's proposed hourly service charge. *See, e.g.,* IR 1-6, Tr. 23-29, RR-5, Hearing Officer Letter. The Department first asked Time Warner to justify its proposed 66% increase in the hourly service charge on April 28, 2014. IR 1-6 ("Provide detailed documentation justifying the increase in the Hourly Service Charge from last year's Form 1205 to this year's Form 1205," where "provide detailed documentation" meant "Provide all data, assumptions, and calculations relied upon. Provide the source of and basis for all data and assumptions employed. Include all studies, reports, and planning documents from which data, estimates, or assumptions were drawn and support for how the data or assumptions were used in developing the projections or estimates. Provide and explain all supporting workpapers"). Time Warner responded by describing its new methodology, but did not explain *how* that methodology resulted in the significant increase. *Id.* Notably, Time Warner did not include a single dollar figure in its response. *Id.*

At the June 12, 2014, evidentiary hearing, the Department again asked Time Warner to justify its proposed increase in the hourly service charge, and Time Warner again described its new methodology without more information. Tr. at 23-26. In order to elicit what it needed to evaluate the reasonableness of Time Warner's proposed hourly service charge, the Department issued a Record Request asking the Company to identify the costs that it added to its 2013 Form 1205 and to compile a sample Form 1205 for 2013 that excluded those costs. *Id.* at 28-29; RR-5. When a cable operator changes its Form 1205 methodology, the Department requests a sample Form 1205 from the operator so that the Department can conduct a sufficient analysis. *See, e.g.,*

Petition of Comcast Cable Commc'ns, LLC to establish & adjust the basic serv. tier programming, equip., & installation rates for the cmtys. in Mass. served by Comcast Cable Commc'ns, LLC that are currently subject to rate regulation, D.T.C. 13-5 ("D.T.C. 13-5"), Record Request RR-1 (Nov. 14, 2013) (providing a Form 1205 from the prior year in a Department-requested format, in addition to the format that the cable operator used nationally, so that the Department could compare the Form 1205 under review to the similarly formatted Form 1205 from the prior year); *Petition of CoxCom, Inc. d/b/a Cox Commc'ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the Town of Holland, D.T.C. 12-1, Information Request D.T.C. 1-5 (Oct. 18, 2012) (providing the two sample Forms 1205 that the Department requested when CoxCom, Inc. changed its Form 1205 methodology). By reviewing a sample Form 1205 containing the present year's information but using the previous year's methodology, the Department isolates the effect the change in methodology has on the proposed rates and thus is able to determine the reasonableness of the proposed rates under the new methodology. See, e.g., Tr. at 28 ("So then we can see the specific effect that adding those costs had as opposed to the normal inflationary increases that might have been experienced by the company to get a true grip on exactly what the increase was that was related to the inclusion of these new costs that were not included in the past.").* In this case, the Department asked for the sample Form 1205 and an identification of the costs Time Warner added to its Form 1205 because the Department needed from Time Warner "some form of detailed numerical analysis, cost analysis so that [it could] at least appreciate what the changes that took place were A, from the inflationary stand point and B, from including different costs and C, from perhaps additional costs, which were incurred by the company because of the [changes in methodology]." *Id.* at 29.

In response, Time Warner repeated its previously provided description of its new methodology and included generic examples of cost categories that the Company added to this year's Form 1205 (e.g., "Certain technology licensing and maintenance costs," "Certain generic software costs," "Maintenance expenses related to set-top boxes," and "Expenses related to the procurement, inventory storage and distribution of set-top boxes"). RR-5. However, Time Warner did not provide the requested sample Form 1205 or any numerical analysis. *Id.* Rather, Time Warner explained that it no longer had the information necessary to file the requested sample Form 1205.⁶ *Id.*

On August 8, 2014, the Department made another request to Time Warner for cost information that it needed to approve the Company's proposed hourly service charge. Hearing Officer Letter at 2; *see also FCC Richardson Order*, ¶ 23 ("A franchising authority that 'reasonably feels it requires clarifying or substantiating information . . . has the right to request and receive clarifying or substantiating information.'" (quoting *FCC Third Rate Order*, ¶ 89)). Although Time Warner had described its new methodology and listed a few of the generic corporate cost categories that it added to this year's Form 1205, the information it provided lacked any numerical analysis and thus was insufficient to be a basis for the Department to

⁶ Massachusetts requires every corporation subject to taxation to retain financial records for at least three years. 830 C.M.R. § 62C.25.1(7); *see also* 47 C.F.R. § 76.924(b) (requiring that cable operators maintain their accounts "in accordance with generally accepted accounting principles"). In addition, Time Warner has requested confidential treatment of certain information for a period of five years with an opportunity to request an extension, indicating that the Company expects records to be retained for at least five years. *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 11-15, *Time Warner Motion for Protective Order* (filed on June 27, 2012). The Department is concerned that Time Warner's refusal to provide the requested sample Form 1205 is indicative of the Company's expectation that the sample Form would show that the Company's proposed Form 1205 does not comply with FCC rules, and that it would therefore benefit the Company simply not to provide the sample Form 1205. *Cf. In re Time Warner Cable Entm't - Advance/Newhouse P'ship*, File No. CSB-A-0723, DA 05-2030, *Memorandum Opinion & Order*, ¶ 15 (rel. July 15, 2005) ("*FCC Time Warner Order*") (citing *Review by the Cable Television Div. of the Dep't of Telecomms. & Energy of FCC Forms 1240 & 1205 filed by Time Warner Cable, Inc.*, CTV 03-4, *Rate Order* at 10 (Sept. 21, 2004) (highlighting the Department's concern that Time Warner refused to provide certain information because it would weigh against Time Warner's burden of proof to do so)).

determine the reasonableness of Time Warner's proposed hourly service charge. *See FCC Richardson Order*, ¶ 20; Tr. at 23-26; RR-5. Accordingly, and given Time Warner's lack of responsiveness regarding specific data relevant to the Department's analysis, the Department asked Time Warner to supplement its response to RR-5 by filing all supporting documentation used to compile this year's Form 1205. Hearing Officer Letter at 2; *See FCC Richardson Order*, ¶ 20 (indicating that although a franchising authority's request for information does not make the information relevant per se, such information may be relevant when the cable operator has failed to supply enough data for the franchising authority to determine the reasonableness of the operator's rates). The Department also offered Time Warner the opportunity to file the originally requested sample Form 1205 in lieu of filing all supporting documentation.⁷ Hearing Officer Letter at 2.

Time Warner responded with another description of its new methodology and a description of the process used to fill out its Form 1205, including a general process the Company used to calculate its hourly service charge. *See Fogarty Letter* at 2-6. However, Time Warner did not provide the requested supporting documentation or sample Form 1205. *Id.* Time Warner's response was still insufficient to allow the Department to approve the Company's proposed hourly service charge.

For example, Time Warner stated that it added "Segment Managed Expenses" and "Centrally Managed Expenses" to its Form 1205, but did not provide any specifics as to what the Company included in those cost categories or assign any dollar values to those costs. *See id.* at 3-4. Instead, Time Warner attempted to justify its proposed increase by stating:

⁷ While a franchising authority should limit its information requests to those which are relevant to its analysis, *see FCC Richardson Order*, ¶ 20, in this case Time Warner failed to provide the requested relevant information, so the Department issued a broader information request, while still affording the Company the option of providing the requested relevant information. Hearing Officer Letter at 2.

[I]n recent years the process of consolidating divisional forms previously used to create the companywide aggregate form no longer picked up certain costs pertaining to residential CPE that were originally maintained at the divisional level but were subsequently migrated to, and recorded by, TWCs corporate level advanced technology implemented function. The 2013 Form 1205 once again includes such costs.

Id. at 6. Time Warner provided no evidence in support of its claim that certain costs were included in the equipment basket many years ago, but dropped from the equipment basket in recent years. *See id.* Specifically, Time Warner did not state when the corporate costs were “no longer picked up,” choosing instead to use generalities such as “over the course of the past 22 years” and “in recent years”;⁸ Time Warner did not provide any detailed identification of the costs that were no longer picked up, instead relying on generic costs categories; and Time Warner did not provide any dollar amounts of the costs that purportedly were dropped off and then re-picked up. *Id.* Time Warner’s unexplained omission of any dollar amounts in this discussion is particularly inadequate, as the Gross Book Value of Time Warner’s proposed “Other 1” category in Schedule A of its Form 1205 increased from just over \$5 million last year to over \$445 million this year. *Compare* Ex. 1, *with* Time Warner 2012 Form 1205 (showing a proposed increase of 8500%). Significantly, Time Warner has not argued to the Department that the requested information is irrelevant or unnecessary to its analysis.⁹

Without the requested data, the Department cannot find that Time Warner justified its proposed increase. As noted above, the Department is concerned that Time Warner may have added corporate costs to this year’s equipment basket that were already accounted for in its

⁸ Moreover, “in recent years,” Time Warner’s hourly service charge has increased steadily each year, making it difficult, without more, for the Department to approve of Time Warner’s claim that certain costs were suddenly “no longer picked up” in these years. Fogarty Letter at 6; Time Warner 2012 Form 1205 (establishing an hourly service charge of \$59.15); Time Warner 2011 Form 1205 (establishing an hourly service charge of \$58.49); Time Warner 2010 Form 1205 (establishing an hourly service charge of \$55.85); Time Warner 2009 Form 1205 (establishing an hourly service charge of \$52.32).

⁹ Such an argument notwithstanding, as the Department has shown herein, the requested information is relevant to the Department’s analysis. *See FCC Richardson Order*, ¶ 20.

program service rates. *See FCC TCI-SL Order*, ¶ 20; 47 C.F.R. § 76.937 (putting the burden of proving that its equipment rates comply with FCC rules on the cable operator). Indeed, it appears that Time Warner may have included costs as a result of a change in its policy for cost classification rather than from a change in operations, a practice that the FCC proscribed in its *FCC Nevada Order*. *FCC Nevada Order*, ¶ 16 (“A result of changes in [a cable operator’s] policy for cost classification . . . is not a sufficient justification to include the costs on Form 1205.”).

Time Warner did not provide a sample Form 1205 as requested; any detailed analysis or breakdown of the costs that the Company added to its 2013 Form 1205; or any information that allayed the Department’s concern that Time Warner’s new methodology resulted in a double recovery. *See FCC TCI-SL Order*, ¶ 20; *FCC Nevada Order*, ¶¶ 14-16; IR 1-6; Tr. at 23-26; RR-5; Fogarty Letter at 2-6. Moreover, the information that Time Warner did provide was insufficient for the Department to approve Time Warner’s proposed hourly service charge. *See, e.g.*, Fogarty Letter at 6 (“The increases in TWC’s installation and equipment rates . . . are primarily the result of increases in the hourly service computation. The increase in the hourly service charge is attributable for the most part to increases in the costs [sic] elements that go in to that calculation.”); *see also FCC Richardson Order*, ¶ 20 (stating that cable operators must provide additional relevant information if requested by the franchising authority and needed to make its decision). Time Warner’s general description of its change in methodology does not demonstrate *how* that change resulted in a proposed 66% increase in the Company’s hourly service charge. RR-5; Fogarty Letter at 2-6. Accordingly, the Department finds that Time Warner failed to comply with the Department’s requests for relevant information regarding its hourly service charge in violation of 47 C.F.R. § 76.939. The Department finds the Company in

default and its hourly service charge unreasonable pursuant to the Department's authority in 47 C.F.R. § 76.937(d).

2. *The Department prescribes a rate for Time Warner's hourly service charge*

Having determined that Time Warner did not justify the reasonableness of its proposed hourly service, but recognizing that a cable operator is permitted to recover actual costs plus a reasonable profit, the Department, using the best information available and pursuant to its authority under 47 C.F.R. § 76.941, prescribes an hourly service charge of \$60.32 for Time Warner. *See* 47 C.F.R. §§ 76.937(d), 76.941.

When prescribing a rate under § 76.941, a franchising authority may use the cable operator's costs from a previous year "as a starting point but should make a reasonable effort to adjust that data" to estimate what the costs would be in the relevant year. *In re Falcon First Commc'ns, L.P.*, File No. CSB-A-0313, DA 05-1270, *Memorandum Opinion & Order*, ¶ 10 (rel. Apr. 29, 2005) ("2005 FCC Falcon Order"); *see also In re Md. Cable Partners*, DA 96-2172, *Memorandum Opinion & Order*, ¶ 7 (rel. Dec. 20, 1996) ("FCC Maryland Order") (stating that a franchising authority must explain how it arrives at the reduced rate when ordering a rate reduction). For example, a franchising authority may adjust a cable operator's hourly labor rate by using "the intervening changes in the price index." *In re Falcon First Commc'ns, L.P.*, File No. CSB-A-0296, et al., DA 99-891, *Memorandum Opinion & Order*, ¶ 12 (rel. May 13, 1999) ("1999 FCC Falcon Order"). In prescribing a rate, a franchising authority may also rely on data from other cable operators. *In re Harron Commc'ns Corp. v. Mass. Cmty. Antenna Television Cmm'n*, DA 95-160, *Consolidated Order*, ¶¶ 13-14, 19-20 (rel. Feb. 7, 1995) ("FCC Harron Order"); *see also FCC Maryland Order*, ¶ 5 (stating that a franchising authority may set the rates

of a nonresponsive cable operator by using financial data from cable operators in neighboring communities, or even industry averages).

Without the requested information from Time Warner regarding its proposed hourly service charge, the Department begins with the Company's hourly service charge from last year, and adjusts that rate by using the intervening changes in the price index. *See 2005 FCC Falcon Order*, ¶ 10; *1999 FCC Falcon Order*, ¶ 12. Time Warner's previous year's hourly service charge was \$59.15. Time Warner 2012 Form 1205. According to the FCC, the intervening change in the price index for the third quarter of 2013—the quarter ending right before Time Warner filed the Petition—is 1.97%. *First Quarter 2014 Inflation Adjustment Figures for Cable Operators Using FCC Form 1240 Now Available*, DA 14-979, *Pub. Notice* at 2 (July 9, 2014). Thus, the Department applies this 1.97% inflation factor to Time Warner's previous hourly service charge of \$59.15 to reach the prescribed hourly service charge of \$60.32.¹⁰

Furthermore, the prescribed hourly service charge of \$60.32 is reasonable in light of the hourly service charges of the other cable operators in Massachusetts. *See FCC Maryland Order*, ¶ 5; *FCC Harron Order*, ¶¶ 13-14, 19-20. Charter Communications has a Department-approved hourly service charge of \$42.46; Comcast Cable Communications, LLC has a Department-approved hourly service charge of \$33.21; and CoxCom, Inc. has a Department-approved hourly service charge of \$58.54. *See Petition of Charter Commc'ns to establish and adjust the basic service tier programming, equip. & installation rates for the cmtys. served by Charter that are*

¹⁰ As noted above, Time Warner's average annual increase in its hourly service charge since 2009 is 4.2%. *See supra* n.4. In the years where Time Warner's increase was larger than the FCC's inflation factor, Time Warner provided the Department with the information needed to approve the increase. *See Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 12-10, *Rate Order* (Nov. 25, 2013); *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 11-15, *Rate Order* (Oct. 31, 2012); *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 09-11, *Rate Order* (Dec. 15, 2010); *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 08-14, *Rate Order* (July 2, 2010).

currently subject to rate regulation, D.T.C. 13-8, *Rate Order* (Oct. 27, 2014) (approving as reasonable Charter Ex. 20); D.T.C. 13-5, *Rate Order* (Mar. 13, 2014) (approving as reasonable Comcast's Form 1205 as filed in response to Department Information Request 1-1); *Petition of CoxCom, Inc. d/b/a Cox Commc'ns to establish and adjust the basic serv. tier programming, equip., & installation rates for the Town of Holland*, D.T.C. 13-3, *Rate Order* (Oct. 7, 2013) (approving as reasonable Cox's Form 1205 as filed in response to Department Record Request 4). Indeed, the prescribed hourly service charge of \$60.32 is still higher than the other cable operators in Massachusetts, and the Department received no information to support a finding that Time Warner's actual costs are significantly greater than other cable operators.

As a result of the foregoing, the Department prescribes an hourly service charge of \$60.32 pursuant to its authority under 47 C.F.R. § 76.941. The Department directs Time Warner to resubmit its Form 1205 using this hourly service charge and to file a refund plan for its Great Barrington, North Adams, and Pittsfield system basic service tier subscribers by December 12, 2014, to account for the resulting basic service tier equipment and installation overcharges.

B. Proposed Additional Outlet A/O Service Fee

In its Form 1205, Time Warner proposed the addition of an Additional Outlet (A/O) Service Fee but did not provide the Department with the requested information needed to approve the fee. The Department thus finds Time Warner in default and, using the best information available, prescribes a rate of zero for additional outlets.

1. *Time Warner did not attempt to demonstrate the reasonableness of its Additional Outlet (A/O) Service Fee*

Under FCC rules, regulated equipment includes "all of the equipment located in the subscriber's home, including . . . connections for additional television receivers." *FCC Jones Order*, ¶ 9; see also 47 C.F.R. § 76.923(a)(1). The cable operator bears the burden of

demonstrating that its proposed equipment rates comply with FCC rules. *See 1993 FCC Rate Order*, ¶ 128; 47 C.F.R. § 76.937(a). In making such a demonstration, the operator “shall comply with franchising authorities’ . . . requests for information, orders, and decisions.” 47 C.F.R. § 76.939. An operator that does not attempt to demonstrate the reasonableness of its rates fails to carry its burden. *FCC Third Rate Order*, ¶ 84.

Time Warner introduced an Additional Outlet (A/O) Service Fee of \$1.50 for additional set top boxes or cableCARDS on April 1, 2014. *See Letter from John S. Mucha, Dir., Gov’t Relations, Time Warner, to Andrea Nixon, Office Manager, Dep’t (Mar. 12, 2014)*. Time Warner, however, did not include this fee on its Form 1205. *See Ex. 1*. On August 8, 2014, the Department asked Time Warner whether basic service tier subscribers are charged this fee and the justification for the fee in the Company’s FCC Forms. Hearing Officer Letter at 2. The Department asked that Time Warner provide the requested information by August 22, 2014. *Id.* On August 22, 2014, Time Warner responded by saying that it “is still researching information in order to respond to this additional request for information.” Fogarty Letter at 7. Time Warner stated that it “hope[d] to be able to provide the response shortly.” *Id.* The Department never received a response.

The Department finds that Time Warner failed to comply with the Department’s requests for relevant information regarding its Additional Outlet (A/O) Service Fee. *See 47 C.F.R. § 76.939*. Time Warner also has not argued that this information is unnecessary or irrelevant to the Department’s analysis. Since Time Warner did not include this fee in its Form 1205, the Department finds that the Company did not attempt to demonstrate the reasonableness of the fee. *See FCC Third Rate Order*, ¶ 84; 47 C.F.R. §§ 76.923(a)(1), 76.937(d), 76.939. Accordingly,

the Department finds Time Warner in default and determines that its proposed Additional Outlet (A/O) Service Fee is unreasonable. *See* 47 C.F.R. § 76.937(d).

2. *The Department prescribes a rate for Time Warner's Additional Outlet (A/O) Service Fee*

Absent any information justifying the proposed Additional Outlet (A/O) Fee, the Department, pursuant to its authority under 47 C.F.R. § 76.941, using the best information available, prescribes a rate of zero for Time Warner's additional outlets. *See* 47 C.F.R. §§ 76.937(d), 76.941.

As discussed above, when prescribing a rate, a franchising authority may use the cable operator's costs from a previous year "as a starting point but should make a reasonable effort to adjust that data" to estimate what the costs would be in the relevant year. *2005 FCC Falcon Order*, ¶ 10. In doing so, a franchising authority may rely on data from other cable operators. *FCC Maryland Order*, ¶ 5; *FCC Harron Order*, ¶¶ 13-14, 19-20. When ordering a rate reduction, a franchising authority also must explain how it arrives at the reduced rate. *See FCC Maryland Order*, ¶ 7.

This is the first year that Time Warner is charging a fee for additional outlets. *See, e.g.,* Time Warner 2012 Form 1205. Therefore, using Time Warner's previous year's costs as a starting point means that the Department begins its prescription analysis with a rate of zero for additional outlets. *See 2005 FCC Falcon Order*, ¶ 10. And Time Warner provided no basis for the Department to adjust that rate as the Company provided no cost information or other justification related to its Additional Outlet (A/O) Service Fee, despite the Department's request for such information. *See* Fogarty Letter at 7; Hearing Officer Letter at 2. The Department is therefore left to look at other Massachusetts cable operators for data to estimate the cost of Time Warner's additional outlets. *See FCC Maryland Order*, ¶ 5 (stating that a franchising authority

may set the rates of a nonresponsive cable operator by using financial data from cable operators in neighboring communities, or even industry averages). In Massachusetts, however, no other cable operator charges an additional outlet fee to its basic service tier subscribers. Thus, data from other cable operators also informs the Department that a rate of zero for Time Warner's additional outlets is appropriate and reasonable. See *FCC Maryland Order*, ¶ 5; *FCC Harron Order*, ¶¶ 13-14, 19-20.

Because Time Warner provided the Department no information with which to adjust Time Warner's previous rate of zero for its additional outlets, and relying on data from other cable operators in Massachusetts, the Department prescribes a rate of zero. See *FCC Time Warner Order*, ¶ 12 (stating that Time Warner was in a better position to estimate the value of a cost than the franchising authority and that Time Warner was not permitted to "pass its burden to the regulator"); *2005 FCC Falcon Order*, ¶ 10; *FCC Maryland Order*, ¶ 7 (indicating that a franchising authority may set a rate to zero so long as it is reasonable to do so and the franchising authority explains why it is reasonable to do so). The Department orders Time Warner to include in its refund plan any Additional Outlet (A/O) Service Fees that Time Warner subscribers in regulated Massachusetts communities have paid to date. See *In re Comcast Cable Commc'ns, LLC*, File No. CSB-0749-A, et al., DA 14-364, *Order*, ¶ 15 (rel. Mar. 19, 2014) ("*FCC Comcast Order*") ("[E]quipment regulations still apply to all the equipment in a subscriber's home that is provided and maintained by the cable operator and that is used to receive the BST, even if it is also used to receive additional tiers of unregulated services."); 47 C.F.R. §§ 76.937(d), 76.942.

C. Time Warner's Navigator

In its Form 1205, Time Warner included its converter boxes but excluded the Navigator software that operates the same converter boxes. Time Warner did not meet its burden to show that it was proper to exclude the Navigator from the Company's equipment basket.¹¹ Indeed, based on the Company's own testimony, it would be inappropriate to exclude the Navigator from the Company's equipment basket. Moreover, Time Warner did not attempt to demonstrate the reasonableness of its charge for the Navigator. Accordingly, the Department finds Time Warner in default and prescribes a rate of zero for the Navigator.

1. *Time Warner failed to prove that the Navigator is not equipment used to receive the basic service tier*

FCC rules clearly state that regulated equipment includes "all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier." 47 C.F.R. § 76.923(a)(1). In calculating proposed equipment rates, a cable operator must include in its equipment basket "all costs associated with providing [such] customer equipment." *Id.* § 76.923(c). The cable operator bears the burden of proving that its proposed equipment rates comply with these rules. *See FCC Harron Order*, ¶ 11; *1993 FCC Rate Order*, ¶ 128; 47 C.F.R. § 76.937(a).

The Department made several requests to Time Warner to provide sufficient information for the Department to approve the Company's exclusion of the Navigator from its equipment basket, but Time Warner failed to carry its burden of proving that the exclusion complied with FCC rules. *See Tr.* at 18-23; RR-4; Hearing Officer Letter.

¹¹ The Department makes no finding with respect to software being a part of or separate from converter boxes, generally. *See, e.g., Petition of Charter Commc'ns to establish & adjust the basic serv. tier programming, equip. & installation rates for the cmty.s. served by Charter that are currently subject to rate regulation*, D.T.C. 13-8, *Rate Order* at 7 (Oct. 27, 2014).

At the evidentiary hearing, Time Warner testified that the Navigator is “not a component of the box itself.” Tr. at 21. However, Time Warner also testified that the Navigator “goes with every box because every box . . . has to have a Navigator attached to it to use it.” *Id.* at 22. Time Warner even suggested that its converter boxes are useless without the Navigator:

MR. MAEL [of the Department]: Okay. So the question we are asking is given that you’ve indicated that everyone that has a box gets Navigator because the box is pretty much useless without it.

MRS. PATTERSON [of Time Warner]: Well, I mean, it can use this Navigator, or it can use a different Navigator. I mean, Navigator is a software that is developed by [the] company.

Id. at 22. Having been told by Time Warner that the converter box cannot function without the Navigator, the Department cannot permit the Company to unbundle the Navigator from its equipment.¹² Indeed, the discrepancy in the record prevents the Department from approving the exclusion of the Navigator from Time Warner’s equipment basket. *See FCC Harron Order*, ¶¶ 11-12 (affirming a franchising authority determination to disallow certain costs because the cable operator “had failed to meet its burden of proof by demonstrating that these costs should be included in the equipment basket”).

In response to questions regarding the integration of the Navigator in the function of the converter box, Time Warner argued that the Navigator is not an inherent part of a converter box’s function, but rather a guide service separate from the converter provided via the converter. Fogarty Letter at 2. Time Warner used on-demand programming as a comparison as “on-demand programming is an advanced video service provided via a VOD-enabled device.” *Id.*

¹² The FCC recently confirmed that cable operators must unbundle basic service tier equipment and service prices. *See FCC Comcast Order*. However, Time Warner misinterprets the *FCC Comcast Order* as condoning its separate, purportedly unregulated, charge for the Navigator. *See* Fogarty Letter at 2 (citing the *FCC Comcast Order*). In the very same paragraph to which Time Warner cites, the FCC made the important distinction that “*non-BST services* were now unregulated services.” *FCC Comcast Order*, ¶ 15 (emphasis added). As the Department demonstrates, Time Warner has not carried its burden of proving that the Navigator is a non-basic service tier service.

Time Warner's comparison reflects a misunderstanding of the FCC's rules. While on-demand programming is a service provided via a set-top box, it is a service that clearly is not "used to receive the basic service tier," nor is it a service that is "associated with providing customer equipment" that is used to receive the basic service tier. 47 C.F.R. § 76.923(a)(1), (c). To the contrary, based on Time Warner's own assertions, the Navigator is integral to the function of the converter box for the basic service tier. *Compare* Fogarty Letter at 2 (stating that "the ability to receive and tune different channels" is an inherent function of the converter box), *with* Tr. at 21-22 (stating that the Navigator is necessary for a converter box to allow basic service tier subscribers to pick channels because it is "a software program that the box uses *so that* the customer can go in and pick channels") (emphasis added). Furthermore, although stating, in contradiction of its prior testimony, that it is possible for a Time Warner subscriber to use a converter box without the Navigator, Time Warner did not support that claim by stating that any of its basic service tier subscribers actually use a digital converter box without the Navigator. *See* Fogarty Letter at 2. Indeed, Time Warner never argued that the Navigator is not "used to receive the basic service tier" or that the Navigator is a cost that is not "associated with providing customer equipment" used to receive that tier. 47 C.F.R. § 76.923(a)(1), (3).

Time Warner also did not provide any cost breakdown that would indicate that the Navigator is somehow a service separate from the box itself.¹³ The Department asked Time Warner to demonstrate its claim that the Navigator is not rate-regulated equipment under 47 C.F.R. § 76.923. Hearing Officer Letter at 1. In response, Time Warner stated—again, in contradiction of its prior testimony—that the Navigator is separate from the box. Fogarty Letter at 2. However, the Company did not provide data to support this claim. *See id.* If Time Warner

¹³ This cost information also would have been useful to the Department in its prescription of a rate for the Navigator. *See infra* section IV.C.3.

had provided cost data for the Navigator in response to this request, Time Warner may have proven that the Navigator is actually separate from its converter box by showing that the Company incurred a separate cost for the Navigator. Time Warner did not make such a showing.¹⁴

In sum, the Department finds that Time Warner has not met its burden of proving that the function and cost, if any, of the Navigator is separate from its converter box. *See FCC Harron Order*, ¶¶ 11-12; 47 C.F.R. § 76.923(a)(1). Accordingly, Time Warner was required to demonstrate the reasonableness of its charge for the Navigator. 47 U.S.C. § 543; 47 C.F.R. § 76.923(a)(1), (c).

2. *Time Warner did not attempt to demonstrate the reasonableness of its rate for the Navigator*

Given that Time Warner did not prove that the Navigator is not regulated equipment, Time Warner was required to justify its fee for the Navigator. Time Warner did not do so.

As discussed above, a cable operator must demonstrate the reasonableness of the rates for all equipment in a subscriber's home used to receive the basic service tier. 47 C.F.R. § 76.923(a)(1). An operator that does not attempt to demonstrate the reasonableness of its rates does not carry that burden. *FCC Third Rate Order*, ¶ 84. And a franchising authority may find a cable operator that does not attempt to demonstrate the reasonableness of its rates in default and, using the best information available, find the rates to be unreasonable and mandate appropriate relief, including prescribing a reasonable rate and ordering the cable operator to refund subscribers the amount they were overcharged. *FCC Time Warner Order*, ¶ 14; *FCC Third Rate Order*, ¶ 84; 47 C.F.R. §§ 76.937(d), 76.941, 76.942.

¹⁴ As addressed by the Department's findings herein, the Department is concerned that Time Warner did not provide any cost data for the Navigator because the Navigator is an inherent part of the converter box and no such separate cost data exists. *See, e.g., id.*

Time Warner proposed to charge its subscribers \$3.27 for the Navigator. RR-4. Since Time Warner did not show that it was proper to exclude the Navigator from its equipment basket, Time Warner was required to demonstrate the reasonableness of the charge. *See* 47 U.S.C. § 543(b)(1); 47 C.F.R. §§ 76.923(a)(1), (c), 76.937(d); RR-4. Time Warner did not attempt to make such a demonstration, choosing instead to maintain its claim that the Company properly excluded the Navigator from its equipment basket. *See, e.g.*, Ex. 1; Tr. at 21-22; RR-4; Fogarty Letter at 1-2. The Department thus finds Time Warner in default and determines that Time Warner's rate for the Navigator is unreasonable. *See* 47 C.F.R. § 76.937(d) ("A franchising authority . . . may find a cable operator that does not attempt to demonstrate the reasonableness of its rates in default.").

3. *The Department prescribes a rate for the Navigator*

Having found Time Warner in default and Time Warner's fee for the Navigator unreasonable, the Department, using the best information available and pursuant to its authority under 47 C.F.R. § 76.941 prescribes a rate of zero for the Navigator. *See id.* §§ 76.937(d), 76.941.

Time Warner did not provide the Department with any cost information related to the Navigator. *See* Tr. at 20-21; RR-4. Instead Time Warner maintained that the Navigator is unregulated. *See* Tr. at 20-21; RR-4. Where a cable operator maintains during a rate proceeding that certain cost information is not necessary for the franchising authority's analysis, it is reasonable for the franchising authority to disallow those costs. *FCC Time Warner Order*, ¶¶ 6, 14-15 (finding that because Time Warner maintained that the fair market value of a channel was not relevant to the franchising authority's analysis, it was reasonable for the franchising authority to disallow the costs Time Warner claimed were associated with the channel). By claiming that

the Navigator is unregulated, Time Warner indicated that the Navigator cost data was unnecessary to the Department's analysis. Accordingly, the Department disallows any costs associated with the Navigator.

Moreover, the Department finds that any costs that Time Warner may have incurred on account of the Navigator have already been accounted for and recovered by the Company in its Form 1205. *See* Ex. 1. This is because in its Form 1205, Time Warner provided cost data seeking to justify a charge for its converter box, and as discussed above, Time Warner testified that its converter boxes could not function without the Navigator. Tr. at 22; Ex. 1. The Department does not possess any cost data for the Navigator that could lead the Department to prescribe a rate other than zero. *See FCC Harron Order*, ¶¶ 11-12 (finding that it was reasonable for the franchising authority to disallow certain costs from the cable operator's equipment basket because the operator failed to provide the franchising authority with detailed information on those costs).

Additionally, as to cost information from other cable operators, the Department does not possess any cost information from other Massachusetts cable operators that would be useful in prescribing a cost for the Navigator. *See FCC Harron Order*, ¶¶ 13, 19-20 (permitting the franchising authority to use cost data from other cable operators to estimate costs for the petitioning cable operator).

As a result of the foregoing, the Department prescribes a rate of zero for the Navigator and determines that this prescription is reasonable. *See FCC Time Warner Order*, ¶ 12 (stating that Time Warner was in a better position to estimate the value of a cost than the franchising authority and that Time Warner was not permitted to "pass its burden to the regulator"). The Department orders Time Warner to include in its refund plan any charges for the Navigator that

Time Warner subscribers in regulated Massachusetts communities have paid to date. *See FCC Comcast Order*, ¶ 15; 47 C.F.R. §§ 76.937(d), 76.942.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That Time Warner's FCC Forms 1240 for the Great Barrington and Pittsfield systems, as amended on May 19, 2014, and for the North Adams system, as amended on November 14, 2014, are APPROVED; and it is

FURTHER ORDERED: That Time Warner's FCC Form 1205, as filed on November 27, 2013, is REJECTED; and it is

FURTHER ORDERED: That Time Warner resubmit its FCC Form 1205 in accordance with this Rate Order, and file a refund plan for all of its subscribers in regulated Massachusetts communities by December 12, 2014, to account for the resulting basic service tier equipment and installation overcharges, as well as the rejection of the Additional Outlet (A/O) Service Fee and the Navigator fee.

By Order of the Department

/s/ _____

Karen Charles Peterson, Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such

petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.

EXHIBIT 2A



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-10

April 28, 2014

Petition of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams, and Pittsfield Systems.

**FIRST SET OF INFORMATION REQUESTS
OF THE DEPARTMENT OF TELECOMMUNICATIONS AND CABLE
TO TIME WARNER CABLE**

Pursuant to 801 C.M.R. § 1.01(8)(g), the Department of Telecommunications and Cable (“Department”) submits to Time Warner Cable the following information requests:

Instructions

1. Each request should be answered in writing on a separate page with a recitation of the request, a reference to the request number, the docket number of the case, and the name of the person responsible for the answer.
2. These requests shall be deemed continuing so as to require further supplemental responses if Time Warner Cable or its witness(es) receives or generates additional information within the scope of these requests between the time of the original response and the close of the record in this proceeding.
3. The terms “provide detailed calculations” and “provide detailed documentation” mean:

Provide all data, assumptions, and calculations relied upon. Provide the source of and basis for all data and assumptions employed. Include all studies, reports, and planning documents from which data, estimates, or assumptions were drawn and support for how the data or assumptions were used in developing the projections or estimates. Provide and explain all supporting workpapers.
4. If any one of these requests is ambiguous, notify the Department so that the request may be clarified prior to the preparation of a written response.
5. File an original and three copies of the responses with Catrice C. Williams, Secretary of the Department, not later than May 15, 2014.

Requests

- D.T.C. 1-1 Explain why Time Warner Cable included the Commission Regulatory Fees (Worksheet 7, Line 708) in both the True-Up Period and the Projected Period in this year's Form 1240, but only in the True-Up Period in the previous year's Form 1240.
- D.T.C. 1-2 For the Great Barrington system, explain the decrease in Retransmission Consent Fees (Worksheet 7, Line 702) from the Projected Period in the previous year's Form 1240 to the True-Up Period in this year's Form 1240.
- D.T.C. 1-3 For the Great Barrington system, explain the decrease in the number of subscribers from the Projected Period in the previous year's Form 1240 to the True-Up Period in this year's Form 1240.
- D.T.C. 1-4 For the North Adams system, explain the increase in the number of subscribers from the Projected Period in the previous year's Form 1240 to the True-Up Period in this year's Form 1240.
- D.T.C. 1-5 For the Pittsfield system, explain the decrease in Copyright Fees (Worksheet 7, Line 703) from the Projected Period in the previous year's Form 1240 to the True-Up Period in this year's Form 1240.
- D.T.C. 1-6 Provide detailed documentation justifying the increase in the Hourly Service Charge from last year's Form 1205 to this year's Form 1205.
- D.T.C. 1-7 Explain the increase in the Gross Book Value of Maintenance Facilities (Schedule A, Line B) from the previous year's Form 1205 to this year's Form 1205.
- D.T.C. 1-8 Explain the increase in the Gross Book Value of "Other 1" (Schedule A, Line B) from the previous year's Form 1205 to this year's Form 1205.
- D.T.C. 1-9 State in detail the types of equipment that Time Warner Cable included in "Other 1" in Schedule A of this year's Form 1205, but did not include in last year's Form 1205. Also, state in detail the types of equipment that Time Warner Cable did not include in "Other 1" in Schedule A of this year's Form 1205, but did include in last year's Form 1205.
- D.T.C. 1-10 State in detail the types of equipment that Time Warner Cable included in "Other 1" and "Other 2" in Schedule B of this year's Form 1205, but did not include in last year's Form 1205. Also, state in detail the types of equipment that Time Warner Cable did not include in "Other 1" and "Other 2" in Schedule B of this year's Form 1205, but did include in last year's Form 1205.

- D.T.C. 1-11 Explain the increase in the Annual Operating Expenses for Service Installation and Maintenance of Equipment for "Other 1" (Schedule B, Line A) from the previous year's Form 1205 to this year's Form 1205.
- D.T.C. 1-12 State in detail the types of equipment that Time Warner Cable included as "Other Equipment" in Schedule C of this year's Form 1205.
- D.T.C. 1-13 Explain why the Total Maintenance/Service Hours for Converter 1 (Schedule C, Line B) is zero.
- D.T.C. 1-14 Explain the increase in the Total Number of Units in Service for Converter 3 (Schedule C, Line C) from last year's Form 1205 to this year's Form 1205.
- D.T.C. 1-15 Explain the difference(s) between Converter 1, Converter 2, and Converter 3 in Schedule C of this year's Form 1205.
- D.T.C. 1-16 Provide detailed documentation of the effect(s) the change in Time Warner Cable's corporate status from Partnership to C-Corporation had on the preparation of the Form 1205 and the calculations therein.

EXHIBIT 2B



John E. Fogarty
Vice President and Assistant Chief Counsel - Regulatory
Legal

May 16, 2014

Catrice C. Williams
Commonwealth of Massachusetts
Department of Telecommunications and Cable
1000 Washington Street
Suite 820
Boston, MA 02118

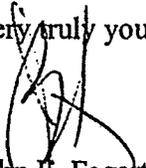
Re: D.T.C. 13-10

Dear Ms. Williams:

Enclosed are Time Warner Cable's responses to the First Set of Information Request of the Department of Telecommunications and Cable to Time Warner Cable.

We apologize that the Responses are slightly late. Thank you for your courtesy.

Very truly yours,



John E. Fogarty

JEF/srh
Enclosures

D.T.C. 1-1 Explain why Time Warner Cable included the Commission Regulatory Fees (Worksheet 7, Line 708) in both the True-Up Period and the Projected Period in this year's Form 1240, but only in the True-Up Period in the previous year's Form 1240.

FCC regulatory fees are a category of external costs recoverable as part of the maximum permitted rate calculated using Form 1240 or as a separate charge by systems using Form 1210. Although Time Warner Cable used Form 1240 in calculating its maximum permitted rate for the previous year, it did not include the regulatory fee cost on Worksheet 7 of its form. Instead, it collected the fee as a separate line item on subscribers' bills. That error was corrected on a going forward basis by including the regulatory fee charge on the Projected Period Worksheet 7 of the current year's Form 1240. However, Time Warner Cable should not have included the regulatory fee on the True-Up Period Worksheet 7. Consequently, Time Warner Cable has revised its Form 1240s for the current year to remove the regulatory fee cost for the True-Up period. This adjustment reduces Time Warner Cable's maximum permitted rate for the 2014 rate year (by reducing the true-up segment) but the maximum permitted rate as adjusted is still greater than the Operator Selected Rate for each of the systems.

Person responsible for response: Christine Sensintaffar

D.T.C. 1-2 For the Great Barrington system, explain the decrease in Retransmission Consent Fees (Worksheet 7, Line 702) from the Projected Period in the previous year's Form 1240 to the True-Up Period in this year's Form 1240.

The difference between the total Retransmission Consent Fees entered for the Projected Period of the Great Barrington system's Form 1240 for last year and the amount entered for the True-Up Period of this year's Form 1240 reflects the fact that on last year's form, Time Warner Cable inadvertently included cost and subscriber data for a community (Great Barrington) that had been previously determined to be subject to effective competition. Correcting this inadvertent error on the current year's Form 1240 resulted in a reduction in both the total retransmission consent fees and average subscribership for the True-Up period compared to the Projected Period estimates used in last year's form.

Person responsible for response: Christine Sensintaffar

D.T.C. 13-10

D.T.C. 1-3 For the Great Barrington system, explain the decrease in the number of subscribers from the Projected Period in the previous year's Form 1240 to the True-Up Period in this year's Form 1240.

As explained in the response to D.T.C. 1-3, the decrease in the number of subscribers estimated for the True-Up Period on the current year's Form 1240 when compared to the estimated number of subscribers for the Projected Period on last year's Form 1240 is attributable to the fact that last year's Form 1240 inadvertently included information for Great Barrington, a community that had previously been determined to be subject to effective competition and no longer subject to regulation.

Person responsible for response: Christine Sensintaffar

D.T.C. 1-4 For the North Adams system, explain the increase in the number of subscribers from the Projected Period in the previous year's Form 1240 to the True-Up Period in this year's Form 1240.

Last year's Form 1240 for the North Adams system inadvertently included Projected Period data (including subscribers) for a community (Cheshire) that had previously been determined to be subject to effective competition, while inadvertently excluding such data (including subscribers) for one of the system's communities (Williamstown) that is still subject to regulation. The True-Up Period calculation on the current year Form 1240 corrected both of these inadvertent errors by deleting the data associated with Cheshire and adding the data associated with Williamstown. Because there are more subscribers in Williamstown than Cheshire, the net effect of this correction was a slight increase in the number of subscribers for the True-Up Period calculation on the current year's Form 1240.

Person responsible for response: Christine Sensintaffar

D.T.C. 1-5 For the Pittsfield system, explain the decrease in Copyright Fees (Worksheet 7, Line 703) from the Projected Period in the previous year's Form 1240 to the True-Up Period in this year's Form 1240.

Time Warner Cable overstated the Projected Period on last year's Form 1240 for the Pittsfield system. On a per subscriber basis, the Copyright Fees for all three of Time Warner Cable's Form 1240s for Massachusetts should be the roughly the same, since all three systems are included on a single compulsory copyright Statement of Account. However, the Pittsfield Form 1240 for last year estimated a much higher Copyright Fee amount (on a per subscriber basis) for the Projected Period than was estimated for Projected Periods on the Forms 1240 for the Great Barrington and North Adams systems. The True-Up Period calculation on the Pittsfield system's Form 1240 for the current year corrects the overstatement in Copyright Fees.

Person responsible for response: Christine Sensintaffar

D.T.C. 1-6 Provide detailed documentation justifying the increase in the Hourly Service Charge from last year's Form 1205 to this year's Form 1205.

In the past, Time Warner Cable computed its company-wide annual Form 1205 (including a company-wide Hourly Service Charge ("HSC")) by combining the data on Form 1205 forms prepared separately at the division level into a single aggregate form. In connection with a corporate reorganization, Time Warner Cable has centralized its accounting at a corporate level. This has necessitated the use of a new methodology in computing the company-wide Form 1205. This new methodology captured accounts previously kept at a more local level as well as corporate level accounts that previously were not consistently included in the aggregated divisional level forms.

More specifically, in preparing its 2014 Form 1205, Time Warner Cable used corporate level data to determine the major components to the Hourly Service Charge ("HSC"), as follows:

Total Capital Costs of Installation and Maintenance (Schedule A). Time Warner Cable computed the first component of the HSC using all of the company's tangible assets except (i) assets related to its news channels (including the Lakers regional sports network); (b) assets related to Media Sales; and (c) capital costs of customer equipment. The assets were assigned, per FCC instructions, to the following categories: Vehicles, Tools, Maintenance Facilities, and Other. These capital costs were then adjusted to estimate the portion related to customer premise equipment in rate regulated communities. The resulting Net Book Value was multiplied by the FCC-designated rate of return to arrive at the return on investment and the current year's depreciation expense was added to arrive at the annual capital cost total.

Total Annual Operating Expenses for Installation and Maintenance (Schedule B). This component of the HSC (which includes salaries, benefits, supplies, etc.) was computed based on Time Warner Cable's current reporting system which distinguishes between Segment Managed Expenses and Centrally Managed Expenses. These expenses, for purposes of the Form 1205 HSC calculation, were calculated/adjusted as follows:

Segment Managed Expenses: Time Warner Cable determined the portion of expenses related to residential set-top boxes for each regulated market by using a factor reflecting a weighted average of residential set-top box capital spending to total residential capital spending.

Centrally Managed Expenses: Time Warner Cable determined the portion of expenses related to residential set-top boxes by using a factor reflecting the weighted average of residential set-top capital spending to total company capital spending.

Finally, Time Warner Cable calculated the total labor hours for maintenance and installation of equipment (the third component of the HSC calculation) by multiplying the number of Time Warner Cable installers by the average number of annual hours worked, adjusted by a factor representing the percentage of time installers are completing residential video installations. The total labor hours also included hours related to installs performed by contractors.

As noted, the approach employed in calculating Time Warner Cable's companywide Form 1205 for 2014 included various accounts that were not represented in the company's previous, division-level computational approach. The higher Hourly Service Charge is largely a consequence of the inclusion of these overlooked accounts.

D.T.C. 13-10

Person responsible for response: Christine Sensintaffar

D.T.C. 1-7 Explain the increase in the Gross Book Value of Maintenance Facilities (Schedule A, Line B) from the previous year's Form 1205 to this year's Form 1205.

The previous year's Form 1205 did not include assets that are currently booked at the corporate level. The inclusion of these assets on the current year's Form 1205 was a factor in the increase in the Gross Book Value of Maintenance Facilities.

Person responsible for response: Christine Sensintaffar

D.T.C. 1-8 Explain the increase in the Gross Book Value of “Other 1” (Schedule A, Line B) from the previous year’s Form 1205 to this year’s Form 1205.

The previous year’s Form 1205 did not include assets that are currently booked at the corporate level. The inclusion of these assets on the current year’s Form 1205 was a factor in the increase in the Gross Book Value of the “Other 1” category.

Person responsible for response: Christine Sensintaffar

D.T.C. 1-9 State in detail the types of equipment that Time Warner Cable included in “Other 1” in Schedule A of this year’s Form 1205, but did not include in last year’s Form 1205. Also, state in detail the types of equipment that Time Warner Cable did not include in “Other 1” in Schedule A of this year’s Form 1205, but did include in last year’s Form 1205.

The “Other” category of assets listed in Schedule A were derived by a process that involved taking all of the Company’s tangible assets (with the exception of those relating to News (and the Lakers RSN) and Media Sales) and excluding the CPE assets included in Schedule C. The remaining assets were broken out using the categories specified on the form: Vehicles, Tools and Maintenance Facilities, with the remaining amount categorized as “Other.” Assets booked at the company’s corporate level were not included on the previous year’s Form 1205.

Person responsible for response: Christine Sensintaffar

D.T.C. 1-10 State in detail the types of equipment that Time Warner Cable included in “Other 1” and “Other 2” in Schedule B of this year’s Form 1205, but did not include in last year’s Form 1205. Also, state in detail the types of equipment that Time Warner Cable did not include in “Other 1” and “Other 2” in Schedule B of this year’s Form 1205, but did include in last year’s Form 1205.

The “Other” category of expenses listed in Schedule B were derived by a process that involved taking all of the Company’s annual operating expenses for installation and maintenance of cable equipment which excluded direct costs (content produced, content purchased, etc.) as well as expenses related to News and Media. The remaining expenses were broken out using the categories specified on the form: Salaries & Benefits, Supplies, Utilities and Other Taxes with the remaining amount categorized as “Other.” On the previous year’s Form 1205, expenses that were booked at the corporate level were not included. The inclusion of these expenses on the current year’s Form 1205 was a factor in the increase in the “Other 1” expense category. All expenses that did not fit into categories specified on the form were classified into “Other 1.” There was no “Other 2” category listed on the current year’s Form 1205.

Person responsible for response: Christine Sensintaffar

D.T.C 1-11 Explain the increase in Annual Operating Expenses for Service Installation and Maintenance of Equipment for “Other 1” (Schedule B, Line A) from the previous year’s Form 1205 to this year’s Form 1205.

The previous year’s Form 1205 did not include expenses that are currently booked at the corporate level. The inclusion of these expenses on the current year’s Form 1205 was a factor in the increase in the Annual Operating Expenses for Service Installation and Maintenance of Equipment.

Person responsible for response: Christine Sensintaffar

D.T.C. 13-10

D.T.C 1-12 State in detail the types of equipment that Time Warner Cable included as “Other Equipment” in Schedule C of this year’s Form 1205.

The “Other Equipment” category in Schedule C consists of CableCARDS.

Person responsible for response: Christine Sensintaffar

D.T.C. 13-10

D.T.C 1-13 Explain why the Total Maintenance/Service Hours for Converter 1 (Schedule C, Line B) is zero.

The Converter 1 category in Schedule C consists of analog converters which are no longer issued or repaired by Time Warner Cable. While there are still a few of these converters in customers' homes, once they are turned in, they are disposed of. No time is spent maintaining or servicing this type of converter anymore.

Person responsible for response: Christine Sensintaffar

D.T.C. 13-10

D.T.C 1-14 Explain the increase in the Total Number of Units in Service for Converter 3 (Schedule C, Line C) from last year's Form 1205 to this year's Form 1205.

Converter 3 consists of DTAs. DTAs are the newest type of converter offered by TWC and many more have been issued in the past year than in the year before.

Person responsible for response: Christine Sensintaffar

D.T.C. 13-10

D.T.C 1-15 Explain the difference(s) between Converter 1, Converter 2, and Converter 3 in Schedule C of this year's Form 1205.

Converter 1 consists of analog converters, Converter 2 consists of non-DTA digital converters, and Converter 3 consists of the more recently introduced DTAs.

Person responsible for response: Christine Sensintaffar

D.T.C. 13-10

D.T.C 1-16 Provide detailed documentation of the effect(s) the changes in Time Warner Cable's corporate status from Partnership to C-Corporation had on the preparation of the Form 1205 and the calculations therein.

The change in corporate status from Partnership to C-Corporation had no effect on the preparation or calculations on the current Form 1205.

Person responsible for response: Christine Sensintaffar

EXHIBIT 3

D.T.C. 13-10

July 9, 2014

In the Matter of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the
Great Barrington, North Adams and Pittsfield Systems.

TIME WARNER CABLE'S RESPONSE TO RECORD REQUESTS BY THE DEPARTMENT
OF TELECOMMUNICATIONS AND CABLE MADE AT PUBLIC AND EVIDENTIARY
HEARING ON JUNE 12, 2014

In the Matter of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams and Pittsfield Systems.

TIME WARNER CABLE'S RESPONSE TO RECORD REQUESTS BY THE DEPARTMENT OF TELECOMMUNICATIONS AND CABLE MADE AT PUBLIC AND EVIDENTIARY HEARING ON JUNE 12, 2014

Request #1:

Explain why Time Warner elected to separately line item the \$2.25 retransmission fee on customers statements. How was the \$2.25 calculated when the 1240 forms are showing a higher amount? Provide messaging to customers of this change.

Response #1:

In recent years, the amount that Time Warner Cable has had to pay broadcast stations in retransmission fees has increased very substantially. To make our customers aware of the significant portion of the charges for cable service now attributable to broadcasters' retransmission fees, Time Warner Cable decided to break out these costs as a separate line item on the bill.

The \$2.25 line item for retransmission fees on the bills of our customers in Massachusetts reflects a somewhat smaller amount than the actual retransmission fees paid by Time Warner Cable based on the number of Massachusetts customers as the FCC 1240 Forms indicate. This was done so that the retransmission fee was uniform for customers in a larger area than just our service area in Massachusetts, making it easier for our service representatives who speak to customers in the larger area to explain the charge.

A copy of the talking points used by these representatives is attached.

In the Matter of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams and Pittsfield Systems.

TIME WARNER CABLE'S RESPONSE TO RECORD REQUESTS BY THE DEPARTMENT OF TELECOMMUNICATIONS AND CABLE MADE AT PUBLIC AND EVIDENTIARY HEARING ON JUNE 12, 2014

Request #2:

Refile the North Adams system form 1240 removing Williamstown as it is not a regulated community.

Response #2:

A revised North Adams system FCC Form 1240, not including Williamstown, is attached.

In the Matter of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams and Pittsfield Systems.

TIME WARNER CABLE'S RESPONSE TO RECORD REQUESTS BY THE DEPARTMENT OF TELECOMMUNICATIONS AND CABLE MADE AT PUBLIC AND EVIDENTIARY HEARING ON JUNE 12, 2014

Request #3:

Provide a copy of the North Adams copyright filing which shows the distant signals listing and supports the calculation on the 1240 form.

Response #3:

The relevant Statements of Account for the periods July 1, 2012 through December 31, 2012 and January 1, 2013 through June 30, 2013 are attached.

In the Matter of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams and Pittsfield Systems.

TIME WARNER CABLE'S RESPONSE TO RECORD REQUESTS BY THE DEPARTMENT OF TELECOMMUNICATIONS AND CABLE MADE AT PUBLIC AND EVIDENTIARY HEARING ON JUNE 12, 2014

Request #4:

Explain the unbundling of the equipment/navigator charges.

Response #4:

TWC currently unbundles (i.e., itemizes) its charges for a converter and its "navigator" charge on subscriber bills in accordance with Commission rules. Thus, a subscriber who leases an HD Set-top Box will see on his/her bill a charge for the HD Set Top box of \$6.98 (the OSR/MPR for the box as calculated on Form 1205) and a separate charge of \$3.27 for "The Guide" (i.e., the navigator). The navigator is not part of the regulated equipment rate because it is a service whose costs are not included in computing the Form 1205 equipment calculation; and it is not part of the regulated "basic service" rate because it is not a basic service provided to every subscriber.

In the Matter of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams and Pittsfield Systems.

TIME WARNER CABLE'S RESPONSE TO RECORD REQUESTS BY THE DEPARTMENT OF TELECOMMUNICATIONS AND CABLE MADE AT PUBLIC AND EVIDENTIARY HEARING ON JUNE 12, 2014

Request #5:

Provide a listing of the costs included in the current year filing of the form 1205 but not included in filings for prior years. Provide a 1205 that doesn't include those costs.

Response #5:

Provide a detailed listing of the costs included in the current year filing of the Form 1205 vs. the prior year filing. Provide a Form 1205 that does not include those variances so that a comparison can be done between the 2 years.

Time Warner Cable has used a national "aggregate" Form 1205 to calculate equipment rates for many years. Prior to this year, the national Form 1205 was prepared by consolidating separately prepared 1205s from several Time Warner Cable regions around the country. The systems included in these regional Form 1205s varied over time as systems were acquired or sold. Costs booked by TWC at the corporate level were not included in these prior aggregate filings, (although it is possible that comparable corporate level costs were unbundled by some of the acquired systems in their pre-Time Warner Cable initial rate setting computations). Unlike the prior year Form 1205s, the current year's national form was prepared on a centralized basis and includes corporate costs that would have been omitted from the prior year form, such as:

Certain technology licensing and maintenance costs.

Certain generic software costs.

Maintenance expenses related to set-top boxes.

Expenses related to the procurement, inventory storage and distribution of set-top boxes.

We no longer have the information available to recreate a 1205 for the current year on the same basis as the 1205s for prior years were prepared.

EXHIBIT 4A

DEVAL L. PATRICK
GOVERNOR



BARBARA ANTHONY
UNDERSECRETARY OF
CONSUMER AFFAIRS AND
BUSINESS REGULATION

GREGORY BIALECKI
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & CABLE

1000 Washington St., Suite 820 Boston, MA 02118
(617) 305-3580 FAX (617) 478-2591
www.mass.gov/dtc

KAREN CHARLES PETERSON
COMMISSIONER

August 8, 2014

Mr. John E. Fogarty, Esq.
Time Warner Cable, Inc.
60 Columbus Circle
New York, NY 10023

Re: D.T.C. 13-10 Petition of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams, and Pittsfield Systems

Dear Attorney Fogarty:

On July 10, 2014, the Department of Telecommunications and Cable ("Department") received Time Warner Cable, Inc.'s ("Time Warner" or "company") responses to the Department's Record Requests made at the June 12, 2014, evidentiary hearing. The Department directs Time Warner to provide clarification regarding its responses to Record Requests 4 and 5, as well as information regarding its Additional Outlet (A/O) Service Fee.

Response to Record Request 4

In Time Warner's response to Record Request 4 regarding its "navigator" charge, the company stated that "The navigator is not part of the regulated rate because it is a service whose costs are not included in computing the Form 1205 equipment calculation." RR-4. However, Time Warner also stated that the navigator "goes with every box because every box . . . has to have a navigator attached to it to use it." Hearing Transcript at 22.

Under federal rules, regulated equipment includes "all equipment in a subscriber's home, provided and maintained by the operator, that is used to receive the basic service tier." 47 C.F.R. § 76.923(a)(1). Moreover, in calculating proposed equipment rates, a cable operator must include "all costs associated with providing customer equipment." *Id.* § 76.923(c). Time Warner bears the burden of proving that its proposed equipment rates comply with these rules. *See id.* § 76.937(a); *Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Report & Order & Further Notice of Proposed Rulemaking*, FCC 93-177, ¶ 128 (rel. May 3, 1993).

Pursuant to 220 C.M.R. § 1.11, the Department requests supplemental legal briefing from Time Warner demonstrating its claim that the "navigator" is not rate-regulated equipment under 47 C.F.R. § 76.923.

Response to Record Request 5

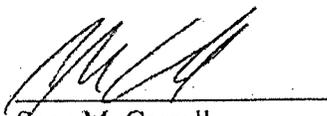
In Time Warner's response to Record Request 5 regarding its new methodology for calculating its hourly service charge, the company stated that it no longer has the information necessary to file a sample FCC Form 1205 for this year with only costs that were included in last year's FCC Form 1205. The Department directs Time Warner to supplement its response to Record Request 5 by filing all supporting documentation used to compile this year's FCC Form 1205 so that the Department may analyze the corporate costs included. Alternatively, Time Warner may draft a sample FCC Form 1205 with only inputs used in last year's FCC Form 1205, excluding the corporate costs that were introduced in this year's Form 1205.

Additional Outlet (A/O) Service Fee

Finally, the Department has learned that on April 1, 2014, Time Warner introduced a new "Additional Outlet (A/O) Service Fee" for additional set top boxes or cableCARDS. The Department directs Time Warner to state whether basic service tier subscribers are charged this fee; identify where in its FCC Forms Time Warner justifies this fee; and state whether programmers charge programming costs to Time Warner on a per subscriber or per outlet basis.

The Department directs Time Warner to file the aforementioned information no later than August 22, 2014.

Sincerely,



Sean M. Carroll
Hearing Officer

cc: Kalun Lee, Acting General Counsel, DTC
Karlén Reed, Director, Competition Division, DTC
Catrice Williams, Secretary, DTC
Michael Mael, Competition Division, DTC
Melinda Poore, Time Warner Cable
Patricia Patterson, Time Warner Cable

EXHIBIT 4B



John E. Fogarty
Vice President and Assistant Chief Counsel - Regulatory
Legal

August 22, 2014

Via Federal Express

Mr. Sean M. Carroll
Hearing Officer
Commonwealth of Massachusetts
Department of Telecommunications & Cable
1000 Washington Street
Suite 820
Boston, MA 02118

Re: D.T.C. 13-10 Petition of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams, and Pittsfield Systems

Dear Mr. Carroll:

This will respond to your letter of August 8, 2014 seeking clarification regarding the responses to Record Requests 4 and 5 included in Time Warner Cable's responses of July 10, 2014 as well as seeking additional information regarding the Additional Outlet (A/O) Service Fee.

Response to Record Request 4

The Department has requested supplemental legal briefing in support of TWC's response to Record Request 4, made at the June 12, 2014 evidentiary hearing. Record Request 4 asked TWC to explain the unbundling of the equipment/navigator charges. TWC's response, as received by the Department on July 10, 2014, stated that:

TWC currently unbundles (i.e., itemizes) its charges for a converter and its "navigator" charge on subscriber bills in accordance with Commission rules. Thus, a subscriber who leases an HD Set-top Box will see on his/her bill a charge for the HD Set Top box of \$6.98 (the OSR/MPR for the box as calculated on Form 1205) and a separate charge of \$3.27 for "The Guide" (i.e., the navigator). The navigator is not part of the regulated equipment because it is a service whose costs are not included in computing the Form 1205 equipment calculation; and it is not part of the regulated "basic service" rate because it is not a basic service provided to every subscriber.

As indicated, TWC separately itemizes its charges for a converter and for the navigator service because it is required to do so by the Commission's rules. Earlier this year, the FCC's Media Bureau addressed the unbundling issue, upholding an LFA decision that required a cable operator that provided a service and the equipment used to access that service for a single fee to remove the equipment costs from the fee.¹ As the Bureau explained, the long-standing requirement that cable operators establish cost-based equipment rates separate from the rates for the services accessed through the use of such equipment remains in effect for rate-regulated cable systems.² The Bureau added that "Section 629(a) of the Cable Act allows equipment for accessing multichannel video programming and other services offered over the system 'if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by the charges for any such service.'"³

Unlike the operator in the case cited above, TWC has not established a single charge that covers both a piece of equipment and a service provided via that piece of equipment. Nor is there any doubt that the navigator is a service separate from the converter used to access it. The inherent functions of TWC's converter include the ability to receive and tune different channels, volume control, and remote control capability. The navigator, which an advanced program guide service provided via the converter (just as on-demand programming is an advanced video service provided via a VOD-enabled device) is not an inherent part of the converter's functions. (Put another way: it is possible for a customer to use a converter without a navigator service, but it is not possible for a customer to use the navigator service without a converter). As such, TWC not only is permitted to separate the charges for the converter and the navigator service, it is required to do so. Furthermore, because the navigator service is optional for basic tier customers, it is (like other non-basic tier services accessed through a "basic" converter) not a basic tier service. Thus, while TWC is required to separately state the price for the navigator, that price is not subject to regulation.⁴

Response to Record Request 5

In prior years, various finance groups at TWC's legacy division level would prepare separate 1205 forms for their respective areas and submit them to the corporate-level finance group. Upon receipt, the corporate-level finance group consolidated the data from the divisional 1205 forms to create an aggregated companywide FCC Form 1205 as permitted by the FCC's rules. The aggregate companywide Form 1205 was then redistributed to the regional offices to be filed with each area's regulated local franchising authorities.

In 2013, as part of a corporate reorganization, TWC modified the way in created its companywide Form 1205. Instead of summing a series of Form 1205s created at the divisional level, TWC established a corporate level Regulatory Reporting group that is now responsible for

¹ *Comcast Cable Communications, LLC*, Order, DA 14-364 (MB, March 19, 2014). For example, the operator in the case reviewed by the Media Bureau listed among its rates an "HD Technology Fee" that included the cost of an HD converter as well as certain service components provided via that converter.

² *Id.* at para. 14.

³ *Id.* (emphasis supplied).

⁴ *Id.* at para. 15 (reiterating that non-basic services are not subject to regulation even if the equipment used to receive them also is used to receive basic services).

preparing a companywide FCC Form 1205 filing to calculate the MPRs for equipment and installation in regulated areas.

The FCC Form 1205 calculation is based on financial data related to the costs associated with regulated equipment and installation for the video basic service tier (BST). These costs include the actual cost of the customer premises equipment (CPE) and expenses incurred, as well as the cost of the equipment and plant necessary for the installation and maintenance of CPE. The Form 1205 consists of several schedules and worksheets, described below along with a description of the methodology TWC's Regulatory Reporting group used in completing the form.

Schedule A – Capital Costs of Service Installation and Maintenance of Equipment and Plant

- This schedule is used to compute the annual capital costs of the equipment and plant necessary for installation and maintenance of customer equipment used to receive the company's residential video services. All of the Company's tangible assets were included in Schedule A, with the exception of those related to News (including the Lakers RSN) and Media Sales. The actual CPE assets were also excluded from this schedule as the capital costs of the customer equipment itself are calculated separately on Schedule C. The assets are categorized, per the FCC instructions, into the following categories: Vehicles, Tools, Maintenance Facilities, and all Other. The gross book value and the accumulated depreciation of the assets were obtained from TWC's general ledger fixed asset subsidiary ledger. Deferred taxes were calculated using tax net book value (NBV). All of these capital costs were then adjusted as follows in order to estimate the portion of capital costs related to CPE in regulated communities.
 - 15.20% - represents the 4 year weighted average of residential set-top box spending to total company capital expenditures
 - 11.66% - represents the weighted average of regulated subscribers to total subscribers

Per the FCC Form 1205 instructions, the resulting NBV was multiplied by the rate of return prescribed by the FCC (11.25%), grossed up for federal and state taxes, to arrive at the return on investment (ROI) of the assets. The current year's depreciation expense was added to the ROI to arrive at the annual capital cost total of equipment and plant.

Schedule B - Annual Operating Expenses for Services Installation and Maintenance Equipment

This schedule collects total annual operating expenses for installation and maintenance of cable equipment. Some of the costs collected here include salaries, benefits and supplies. In a change from prior practice, TWC's P&L now reports segment managed expenses and centrally managed expenses. Direct costs (content produced, content purchased, etc.), as well as expenses related to News and Media, were excluded from this calculation. The expenses were allocated as follows:

- **Segment Managed Expenses**
 - Residential business segment expenses for each of the regulated multiplied by 18.80% (4 year weighted average of residential set-top box spending to total residential capital expenditures)
 - Result multiplied by percentage of regulated subscribers specific to each regulated area:
 - Hawaii = 100% regulated
 - Midwest = 5.97% regulated
 - East = 17.21% regulated

- **Centrally Managed Expenses**
 - All centrally managed expenses x 15.20% (4 year weighted average of residential set-top box spending to total company capital expenditures)
 - Result multiplied by 11.66% (weighted average of regulated subscribers to total subscribers)

Schedule C - Capital Costs of Leased Customer Equipment

This schedule computes the annual capital costs for each model or category of customer equipment that is offered in connection with regulated service using the same basic methodology applied in Schedule A. As this schedule focuses specifically on CPE related equipment, only the amounts for residential video CPE were pulled and then adjusted based on the market specific regulated subscriber percentages.

Schedule C also requires total maintenance/service hours related to each category of CPE to be reported. This was calculated as follows:

- Number of connects for each type of CPE multiplied by the average amount of time spent readying the equipment for installation plus disconnects multiplied by the average amount of time spent prepping the equipment for redeployment.
- Service Hours also includes an adjustment to the disconnects count of 20%. This accounts for "fall out/fail", meaning some boxes are not worth the effort to clean and screen and therefore no time is spent reconditioning them.
- DTAs require no prep time before being sent out to our customers; however, approximately 26% of the time, our customers are unable to activate the DTA per the instructions included in the mailing. Therefore, the customer must contact a customer service representative for assistance with activation of their DTA.
 - The average time spent on the phone with a customer service rep is 10 minutes.
 - Additionally, only 10% of DTAs are currently being redeployed, so only 10% of the DTA disconnects number has been included in the calculation of the DTA redeployment times.

Schedule D – Average Hours per Installation

This schedule is used to calculate costs of specific equipment and installations to derive the maximum rates that may be charged for regulated equipment and installations. In it, the average amount of time to perform specific types of installations is reported. The time to complete certain activities was determined based on the cap standards surveys maintained by the Company. It is important to note that the cap standards process is reviewed annually by a TWC internal control group as well as audited by the Company’s external auditors.

Installation Type	Time in hrs	
Average Hours per Unwired Home Installation	1.0400	Includes time for meet and greet, drive and installation.
Average Hours per Pre-Wired Home Installation	0.8300	Includes time for meet and greet, drive and installation.
Average Hours per Additional Connection Installation at Time of Initial Installation	0.3308	Includes time for installation and wallfish.
Average Hours per Additional Connection Installation Requiring Separate Installation	0.8308	Includes time for meet and greet, drive, installation and wallfish.

Worksheet for Calculating Permitted Equipment and Installation Charges

Step A: Hourly Service Charge

An hourly service charge (HSC) is calculated as follows:

- Total capital costs of installation and equipment calculated on schedule A
- Plus total annual operating expenses for installation and maintenance calculated on schedule B.
- Result is then divided by the total labor hours for maintenance and installation of customer equipment which is calculated as follows:
 - Number of TWC installers multiplied by the average number of annual hours worked (pulled from data provided by payroll used in the calculation of the company’s cap standards).
 - Result multiplied by 11.66% to get the number of regulated maintenance hours
 - Result multiplied by 48% (residential video revenue to total revenue) to determine the hours spent on residential video work.
 - Estimated contractor hours were also added based on the percentage of installs completed by contractors by market (collected as part of the cap standards survey process) supplied by the Fixed Asset Consolidation Team.

Steps B through F: Calculated Rates

These steps are completed using the information from Step A and the Schedules to calculate maximum permitted rates for installations, leased remotes and leased converter boxes as well as to indicate the rate that TWC charges for changing service tiers and equipment (typically a presumptively flat rate of \$2.00) as follows:

	2012	2013
Hourly Service Rate	\$ 59.15	\$ 97.90
Installation Rates		
Installation of Unwired Homes	\$ 70.58	\$ 101.82
Installation of Prewired Homes	\$ 54.10	\$ 81.26
Installation of Additional Connections at Time of Initial Installation	\$ 26.21	\$ 32.38
Installation of Additional Connections Requiring Separate Install	\$ 41.97	\$ 81.34
Equipment Rates		
Remote Control	\$ 0.36	\$ 0.33
Converter Box Type 1: Non-Addressable	\$ 0.24	\$ -
Converter Box Type 2: Addressable	\$ 5.84	\$ 6.98
Converter Box Type 3: DTA	\$ 1.51	\$ 2.11
Other Equipment (Cable Card)	\$ 2.52	\$ 3.49
Charge for Changing Tier	\$ 2.00	\$ 2.00

The increases in TWC's installation and equipment rates for for 2013 compared to 2012 are primarily the result of increases in the hourly service computation. The increase in the hourly service charge is attributable for the most part to increases in the costs elements that go in to that calculation. In particular, over the course of the past 22 years, changes in the way TWC records certain relevant costs that previously had been recorded at a divisional level (and thus would have been included in the aggregated Form 1205 created out of the divisional forms) resulted in those costs being recorded at the corporate level; under the decentralized process of consolidating divisional level forms, these costs would not have been picked up in the hourly service charge calculation. For example, in recent years the process of consolidating divisional forms previously used to create the companywide aggregate form no longer picked up certain costs pertaining to residential CPE that were originally maintained at the divisional level but were subsequently migrated to, and recorded by, TWCs corporate level advanced technology implemented function. The 2013 Form 1205 once again includes such costs.

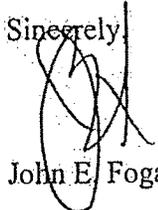
In conclusion:

- The information used in the preparation of TWC's 2013 Form 1205 was pulled from the Company's general ledger and subsidiary records maintained in accordance with GAAP.
- Because all of the Company's accounts are not maintained in accordance with the FCC rules related to Form 1205, the use of estimates is permitted in calculating equipment and installation costs.
- The estimates used in the preparation of Form 1205 are both reasonable and repeatable.
- Per the FCC instructions related to Form 1205, when cost data is not available at the franchise area level, costs at the Company level may be used as long as they can be "adjusted" to reflect franchise level information.

Additional Outlet A/O Service Fee

Time Warner Cable is still researching information in order to respond to this additional request for information. We hope to be able to provide the response shortly.

Sincerely,



John E. Fogarty

JEF/srh

cc: Kalun Lee, Acting General Counsel, DTC
Karlén Reed, Director, Competition Division, DTC
Catrice Williams, Secretary, DTC
Michael Mael, Competition Division, DTC
Melinda Poore, Time Warner Cable
Patricia Patterson, Time Warner Cable

EXHIBIT 5

CERTIFIED COPY

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

DOCKET NO.: D.T.C. 13-10

* * * * *

IN THE MATTER OF PETITION OF TIME WARNER CABLE FOR *
REVIEW OF FCC FORMS 1240 AD FORM 1205 FOR HE GREAT *
BARRINGTON, NORTH ADAMS, AND PITTSFIELD SYSTEMS *

* * * * *

PUBLIC AND EVIDENTIARY HEARING

BEFORE: THE HEARING OFFICER SEAN CARROLL

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Hearing Room 1E

1000 Washington Street

Boston, Massachusetts

Thursday, June 12, 2014, 11:07 a.m. - 12:12 p.m.

617-471-9810
OFFICE@LUNARPLANS.COM

CERTIFIED COPY

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

APPEARANCES:

THE BOARD:

SEAN CARROLL

MICHAEL MAEL

ON BEHALF OF TIME WARNER CABLE:

JOHN FOGARTY

VICE PRESIDENT AND ASSISTANT CHIEF COUNSEL

LEGAL

60 COLUMBUS CIRCLE

NEW YORK, NY 10023

212-364-8464

704-973-6203 FAX

MELINDA POORE

VICE PRESIDENT, GOVERNMENT RELATIONS

NORTHEAST

118 JOHNSON ROAD

PORTLAND, ME 04102

207-253-2217

PATRICIA PATTERSON

FINANCE MANAGER - NORTHEAST

TECHNICAL OPERATIONS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

INDEX

PUBLIC RECORD 4-42

Public Comment Submitted to Record 5

Exhibit 1 Time Warner Cable FCC Form 1205 5

Exhibit 2-4 Time Warner Cable FCC Form 1240 5

Exhibit 5 Time Warner Cable Rate Card 42

RECORD REQUEST 1A 13

RECORD REQUEST 1B 14

RECORD REQUEST 1C 40

RECORD REQUEST 2 14

RECORD REQUEST 3 15

RECORD REQUEST 4A 21

RECORD REQUEST 4B 21

RECORD REQUEST 4C 23

RECORD REQUEST 5 29

CERTIFICATE PAGE 43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

PROCEEDINGS:

THE HEARING OFFICER: Good morning everyone and welcome to the Department of Telecommunications and Cable Public and Evidentiary Hearings in Docket 13-10. My name is Sean Carroll. I am the Hearing Officer for the Department. It is now just past 11:00 AM on Thursday June 12, 2014, and we are in Hearing Room 1E of the Departments Boston Office located at 1000 Washington Street.

On November 27, 2013, Time Warner Cable filed a petition to establish and adjust the basic service to your programming equipment and installation rates for its Great Barrington, North Adams and Pittsfield systems.

Notice of today's proceeding was duly published on May 27 and June 2, 2014 in the Berkshire Eagle as well as Cable Cast on Pittsfield Community television and Northern Berkshire Community Television and Community Television for the Southern Berkshires at varies times between May 5th and today.

Before we open for comments, I just want to remind everyone that today's proceedings are being memorialized by a reporter. In order to ensure an accurate

1 record, please speak with a loud and clear voice, and
2 refrain from speaking with gestures as only spoken words
3 will be recorded.

4 Are there any members of the State
5 Legislature present that wish to testify? There are none.
6 Are there any other elected officials or representatives of
7 state or local government that wish to testify? There are
8 none. Are there any members of the public who wish to
9 testify? There are none present but on June 9, the
10 Department received public comment from Rachel Branch of
11 North Adams, and I entered those into the record now. I
12 have copies. If there are no other commenters I will now
13 close the public hearing and open the evidentiary hearing.

14 Joining me on the bench for the evidentiary
15 hearing is Michael Mael, of the Departments Competition
16 Division. As the initial matter, I note that no petition
17 to intervene has been received by the Department.
18 Additionally, I have marked certain documents as exhibits.
19 Time Warner's FCC Form 1205 as filed on November 27, 2013,
20 is Exhibit 1. Time Warner's FCC Forms 1240 as filed on May
21 19, 2014 are marked as Exhibits 2 through 4 for the Great
22 Barrington North Adams and Pittsfield Systems respectfully.
23 And Finally, I accept Time Warner's responses to the
24 Departments information requests as late filed, but I ask

1 in the future just please file a motion if you need
2 additional time and we can work with you through that.
3 Those responses will be marked at DCT IR-1-1 through 1-16.
4 Will counsel for Time Warner, please identify yourself for
5 the record?

6 MR. FOGARTY: Yes, my name is John Fogarty.
7 I am an Attorney for Time Warner Cable. I am joined here
8 today by Melinda Poore a Government Relations Vice
9 President for the Northeast for Time Warner Cable and
10 Patricia Patterson from our Financial Group. I believe
11 Melinda would like to make an opening statement if that is
12 agreeable.

13 THE HEARING OFFICER: Yes.

14 MR. FOGARTY: And then we are certainly
15 prepared to answer any questions you may have.

16 THE HEARING OFFICER: All right.

17 MRS. POORE: Thank you for the opportunity
18 to be here today in connection with the review over Time
19 Warner Cable's basic service tier programming, equipment
20 and installation rates, which became effective March 2014.
21 We provided the advance public notices for the hearing and
22 copies which you have received.

1 Time Warner Cable continues to invest in its
2 network to improve our services and the customer experience
3 in our Massachusetts cable operations. Over the last year,
4 Time Warner Cable has announced major technical advances
5 including additional -- adding 20 linear channels as well
6 as 31 Hi-definition channels. So customers in our
7 Massachusetts systems today have access to over 215 hi-def
8 channels, including more international channel options.

9 We have launched a national channel lineup
10 last year which provides -- it is basically a theme-based
11 genera based channel lineup to make grouping channels
12 together more intuitively, but also simplifying the
13 searching ability for customers to find their favorite
14 programming.

15 Our interactive guide has been enhanced to,
16 again, better provide options for searching by genera and
17 filtering out channels that they can find things faster and
18 easier.

19 We increased our On Demand Portal. We have
20 now over 18 thousand On Demand programs featured in one
21 seamless environment. More channels are now available on
22 our TWC TV applications, which are available outside the
23 home now. You can watch your package on your tablet
24 outside the home.

1 We did upgrades to the PC, Apple iOS,
2 Android platform and also launched our TWC TV on the Roku,
3 Samsung Smart TV, Xbox and Kindle devices. Again, just
4 offering more accessibility to their services through a
5 greater base of technology.

6 We did increase our broadband speeds. Our
7 fastest speed was actually increased to 100 megabits per
8 second, and our standard speed was increased 50% to 15
9 megabits per second. We have continued on our technical
10 support free service calls to customers needing -- having
11 service calls. We also have same day and one-hour
12 appointment windows and a 24/7 US-based support for phone
13 calls.

14 We also launched nighttime and weekend
15 appointments with a feature to text message customers ahead
16 of time when a technician is on their way, so that they
17 know when they will be at their home.

18 We also have our Time Warner Cable News. We
19 have a news bureau in Berkshire County and providing local
20 news reports, detailed local weather as well as live news
21 programming.

22 This year as you are aware we have
23 implemented a broadcast TV fee on customer bills, which
24 defers the cost -- the increase cost imposed by

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 broadcasters. That fee is \$2.25. The price for our basic
2 level of service has been adjusted in our regulated
3 communities to accommodate this change, which really
4 resulted in no change for the basic price for North Adams
5 and Pittsfield systems and resulted in a price decrease for
6 the customers in Lee, Lenox and Stockbridge. So in all
7 areas the basic rate remains below the maximum permitted
8 rate.

9 Also, lastly, the Department is aware that
10 Comcast or Time Warner Cable has agreed to be acquired by
11 the Comcast Corporation and those proceedings, and that
12 merger is under way. We are happy to answer any questions
13 you might have.

14 THE HEARING OFFICER: Thank you. Will the
15 witnesses, please raise your hand so you may be sworn in
16 for the record?

17
18 Witnesses Sworn

19
20 THE HEARING OFFICER: Thank you. Mr. Mael,
21 would you like to begin?

22 MR. MAEL: I would like to follow up to your
23 -- the broadcast fee. When did Time Warner start charging
24 the \$2.25 broadcast fee?

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 MRS. POORE: That was in March 2014.

2 MR. MAEL: So it was just introduced now?

3 MRS. POORE: Yes.

4 MR. MAEL: Now built into the basic rate,
5 via the rate form just as an example in the Lee, Lenox
6 system is a \$2.89 of retransmission fees. Now my
7 assumption when I saw the \$2.25 fee a while back was that
8 that was a way of introducing the fact that there are costs
9 associated with broadcast TV now than years in the past,
10 however, that 2.25 was actually a conservative estimate of
11 what the actual fee of 2.89. So that built into the rate
12 was 2.89, and yet you were showing a 2.25 fee.

13 So the question is is this 2.25 fee simply
14 being added to the North Adams and Lee, Lenox systems,
15 excuse me, Pittsfield systems on top of what the rate was
16 even though the retransmission costs were already built
17 into the rate?

18 MRS. POORE: My understanding is that it was
19 -- it is supposed to be a neutral -- that is would be a
20 neutral net to the customers, in a sense. I can't -- I am
21 not as familiar with the forms personally, so I think Trish
22 can help us with that one.

23 MRS. PATTERSON: Okay, so what they did was
24 -- my understanding of what they did was they added the

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 2.25 fee instead of doing necessarily a rate increase on
2 the basic tier. So yeah, it is added on top. So like in
3 Lee, Lenox the new rate is 12.31 plus the 2.25.

4 MR. MAEL: So 12.31?

5 MRS. PATTERSON: Yes.

6 MR. MAEL: So you are saying its 14.56, the
7 new rate?

8 MRS. PATTERSON: Right.

9 MR. MAEL: Right, so, but is the presentation
10 on the bill 12.31 and then 2.25?

11 MRS. PATTERSON: Yes.

12 MRS. POORE: Yes, it is separately.

13 MR. MAEL: Now last year's rate in Lee,
14 Lenox was 12.99.

15 MRS. POORE: Was 12.99.

16 MR. MAEL: So basically you are increasing
17 the rate by \$1.57?

18 MRS. POORE: Yes.

19 MRS. PATTERSON: Yes.

20 MR. MAEL: Now obviously that is your
21 prerogative you have the headroom to do that, but I am just
22 curious as to what the premise is to contribute it to
23 broadcast fees, which have all been included in the rate

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 calculations in the case of Lee, Lenox this year 2.89,
2 which exceeds the 2.25.

3 MRS. PATTERSON: I think the 2.25 we have
4 established across the entire company. We came up with a
5 standard rate for the entire country, so that it would be
6 the same when customers call into our call centers
7 everything is the same. That is where the 2.25 came from.

8 I think the reason now that they have
9 broken it out on the bill is so that the customers
10 understand what the programmers are charging -- that they
11 are charging us a huge fee to do that. We don't call it
12 out by a programmer, but that is really what that money is
13 for. It is to show the customer that we still have to pay
14 the stations.

15 MR. MAEL: No, I understand but I'm just --
16 had the presentation been a rate of \$14.56 and then showing
17 that including within 14.56 was \$2.25 of retransmission
18 costs or broadcaster fee, as you call it. Within that same
19 rate is -- well depending I suppose on the community is the
20 commission regulatory fee.

21 MRS. PATTERSON: Yes.

22 MR. MAEL: Is built into the rate?

23 MRS. PATTERSON: That is my understanding.

24 They switched that this year also in March.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 MR. MAEL: I know because we had the issue
2 with that and then any franchise-related costs that are
3 typically built in perhaps.

4 MRS. PATTERSON: I don't know if we have any
5 franchise costs.

6 MRS. POORE: Not that would be built in.

7 MR. MAEL: And you don't build them in, so
8 you decide not to build them in at this time.

9 MRS. PATTERSON: Right.

10 MRS. POORE: Yes.

11 MR. MAEL: So just for clarification, you
12 have taken a -- the company has decided to take, I'm not
13 going to say arbitrary but a universal number which does
14 not have specific relationships to any particular community
15 as a way of indicating two subscribers that there is now a
16 charge for by broadcasters for airing their signals.

17 MRS. POORE: Yes.

18 MR. MAEL: Despite the fact that that
19 information is already contained within the rate form it's
20 being shown as something separate. As Record Request
21 number 1 can Time Warner provide a response as to why the
22 company has elected to use this type of universal number
23 rather than using a specific number, the specific cost in

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 each community of what the broadcast, or as it has turned
2 into form retransmission fees are.

3 THE HEARING OFFICER: That will be Record
4 Request 1A and then for 1B, how did Time Warner come up
5 with 2.25, specifically?

6 MR. MAEL: Okay. In response to Information
7 Request 1-4, Time Warner indicates that it has not included
8 costs for Williamstown a community that is still subject to
9 regulation, while including cost for a Cheshire community
10 that is no longer subject to regulation. According to
11 department records, Williamstown is not now nor was ever
12 subject to basic tier regulations by the department.

13 Can Time Warner, I guess this would be
14 Record Request 2, please revisit that and make the
15 appropriate adjustment to remove the Williamstown costs and
16 subscribers from the form.

17 MRS. POORE: Okay. Sure.

18 THE HEARING OFFICER: Then refiled on Form
19 1240. Okay, that will be Record Request 2.

20 MR. MAEL: In response to Information
21 Request 1-5, Time Warner indicated that it had overstated
22 the projection period last years for the Pittsfield system
23 of copyright fees. It said that all three systems in the
24 Berkshires on the copyright fee should be the same. Do

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 some of the systems in the Berkshires have grandfathered
2 copied right allowances for permitted distance signals?

3 MR. FOGARTY: Excuse me, if I could just
4 make a note that the response actually said roughly the
5 same.

6 MR. MAEL: Correct. That's right.

7 MRS. PATTERSON: Interesting. I haven't
8 seen the copyright filings in a while. I'd have to
9 actually get a copy of them to look at.

10 MRS. POORE: To see if they are
11 grandfathered.

12 MR. MAEL: You work with the copyright
13 filings in general?

14 MRS. PATTERSON: No, I don't.

15 MR. MAEL: It's my understanding that the
16 way that the copyright works is that based on the number of
17 distance signals, and you have a certain number that is
18 permitted, but it is also that depending on the age of the
19 system and its location. They have different numbers of
20 permitted distance signals. Could you as Record Request 3,
21 could Time Warner provide a copy of the most-recent
22 copyright filing that was used in preparing the Forms 1240?

23 MRS. POORE: Okay.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 MR. MAEL: And also indicate whether any of
2 the three regulated systems in the Berkshires have more
3 permitted distance signals than the others.

4 MRS. PATTERSON: Okay.

5 MR. MAEL: I only need to see one of the
6 copyright filings, and I'm sure there is at least two used
7 because of the crossover.

8 MRS. PATTERSON: I'm betting that there are
9 probably two.

10 MR. MAEL: Probably, three used but between
11 the most recent one would be fine.

12 MRS. PATTERSON: Yup, no we can get a copy
13 of the most-recent filing.

14 MR. FOGARTY: Just to clarify you would like
15 a listing of the distance signals carried in each of the
16 systems.

17 MRS. PATTERSON: It will list them on the
18 filings.

19 MRS. POORE: Yes.

20 MR. MAEL: It is on the form but I just
21 wanted clarification specifically the North Adams system, I
22 believe has grandfathered -- had a grandfathered larger
23 number of permitted distance signals than the other
24 systems. Our COID numbers for the North Adams system are

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 001, 002, 003, 004, 005. So I am pretty sure they are the
2 oldest communities that we have.

3 MRS. POORE: Yeah.

4 MR. FOGARTY: That makes sense if you have
5 been to North Adams.

6 MRS. POORE: Okay.

7 MRS. PATTERSON: I will request the North
8 Adams filing.

9 MRS. POORE: Okay, thanks.

10 THE HEARING OFFICER: Do you want the number
11 of distance signals for each system?

12 MR. MAEL: Yes. Well, those are going to be
13 on the copyright filing will --

14 MRS. PATTERSON: The copyright filing will
15 list each distance signal.

16 MR. MAEL: And it will break it out by
17 system as well.

18 MRS. PATTERSON: It usually, yeah. Usually
19 the form will also break it out by system. If it doesn't I
20 will make sure we include that.

21 THE HEARING OFFICER: So that is Record
22 Request 3.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 MR. MAEL: On the rate card, there is an
2 indication of a charge for Navigator. What is Time
3 Warner's Navigator?

4 MRS. POORE: That's the guide. The
5 electronic guide. It used to be, correct me if I'm wrong,
6 but as I understand it it used to be embedded in the
7 package price, and that is also broken out separately this
8 year.

9 MRS. PATTERSON: It was embedded with the
10 equipment.

11 MR. MAEL: It lists the price from anywhere
12 from \$.50 to \$2.79.

13 MRS. POORE: So I also understand that it is
14 also assessed or charged on additional boxes. So if you
15 have one -- if you have multiple boxes in your house, cable
16 boxes, or digital equipment, then it's charged on those
17 additional boxes but the cost is less than on the primary
18 box.

19 MRS. PATTERSON: That is my understanding.
20 As you have more boxes the rate changes on that additional
21 outlet.

22 THE HEARING OFFICER: Does it change on the
23 first box as well or --

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 MRS. PATTERSON: It's not supposed to change
2 on the first box that I know of.

3 MRS. POORE: It is less on the additional
4 boxes.

5 MRS. PATTERSON: So the first box will be
6 the most and then the second box will be a little less and
7 then the third box will be even lesser.

8 MR. MAEL: When did Time Warner introduce
9 this charge?

10 MRS. POORE: This year.

11 MRS. PATTERSON: No, the Navigator was part
12 of the equipment previously --

13 MRS. POORE: Right.

14 MRS. PATTERSON: -- but Navigator has been
15 out there since -- in Massachusetts -- I'd have to check on
16 it. It has been a couple of years at least in
17 Massachusetts. I know up in our Maine system, we have been
18 charging it since 2001.

19 MR. MAEL: So when you say part of the
20 equipment --

21 MRS. PATTERSON: So they were charging like
22 8.95 for the Navigator and the box. The box obviously is
23 regulated and has a certain set price and a difference
24 between that box regulated rate and the 8.95 is what we

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 were charging for the Navigator. They started separating
2 the two apart.

3 MR. MAEL: How did -- do you know what
4 adjustments were made to the cost of the box when Time
5 Warner decided to establish a separate price for Navigator
6 and a separate price for the physical box?

7 MRS. POORE: I could find out. It depends
8 on what year it was, right.

9 MRS. PATTERSON: My understanding is they
10 broke it apart this year. So it would have been the -- I
11 assume it would be the 1205 that was filed this fall. But
12 I can find out.

13 MR. MAEL: Well based on looking at the box,
14 excuse me, the filings themselves tough to discern what
15 adjustments were made especially with the new addition of
16 boxes and the retirement of the older equipment. It is
17 hard to see any kind of major adjustment, which would have
18 explained the unbundling of the Navigator from the box
19 itself.

20 MRS. PATTERSON: We can put that in, and we
21 can explain it. I will have to get with the revenue group
22 and figure that out.

23 THE HEARING OFFICER: That's Record Request

24 4.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 MR. MAEL: So Record Request 4, if you can
2 explain how Navigator was unbundled from the box and what
3 adjustments were made on the form to account for this
4 unbundling.

5 Under what premise does Time Warner believe
6 that Navigator -- the cost of Navigator does not need to be
7 justified on the FCC Form 1205 as customer premise
8 equipment?

9 MRS. POORE: Why the guide isn't -- I'm
10 sorry. So just to clarify your question. So why the guide
11 isn't listed on the form as part of equipment?

12 MR. FOGARTY: We will respond to that with
13 these other questions.

14 MRS. POORE: Yeah, I mean I could make a
15 guess, but I would rather not.

16 THE HEARING OFFICER: We will make that part
17 B of Record Request 4.

18 MRS. PATTERSON: I can actually --

19 MRS. POORE: Trish actually knows the answer
20 to that.

21 MRS. PATTERSON: The Navigator is not a
22 component of the box itself. It is a program that goes
23 through the box. So it is really a software program that

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 the box uses so that the customer can go in and pick
2 channels. It's not a part of the box itself.

3 MR. MAEL: Could you roughly estimate what
4 percentage of people with boxes take the Navigator?

5 MRS. PATTERSON: It goes with every box
6 because every box uses -- it has to have a Navigator
7 attached to it to use it. The only ones that wouldn't be
8 would be the digital adapters because they don't have a
9 guide.

10 MR. MAEL: So if that is the case what was
11 Time Warner's reasoning in separating out the cost of the
12 Navigator from the cost of the box?

13 MRS. PATTERSON: That would have to be in
14 the response. I wasn't part of that.

15 MR. FOGARTY: Yes, we will respond to that.

16 MR. MAEL: Okay. So the question we are
17 asking is given that you've indicated that everyone that
18 has a box gets Navigator because the box is pretty much
19 useless without it.

20 MRS. PATTERSON: Well, I mean, it can use
21 this Navigator, or it can use a different Navigator. I
22 mean, Navigator is a software that is developed by company.
23 Our Navigator looks totally different than Comcast.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 MRS. POORE: Let's just follow up and get
2 the --

3 MRS. PATTERSON: We can get a more specific
4 with the engineering group.

5 MR. FOGARTY: We will respond to that.

6 THE HEARING OFFICER: Okay. So I guess we
7 will make the reasoning of the breaking out of the cost
8 part C of Record Request 4.

9 MR. MAEL: And as part of, I guess, B to
10 indicate under what reasoning Time Warner believes that the
11 Navigator is not subject to regulation subject to be part
12 of the form.

13 MR. FOGARTY: That is what I understood the
14 question to be.

15 MR. MAEL: Just want to make sure that is
16 clear. Okay. In response to Information Request 1-7 Time
17 Warner explains that the increase and the hourly service
18 charge was directly related to including assets booked at
19 the corporate level that had not been previously included
20 in the calculation. Could you please explain why Time
21 Warner decided to now start including other costs in
22 calculating its hourly service charge?

23 MRS. PATTERSON: What had happened, Michael,
24 when we centralized having this form done centrally we used

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 to have them done in the markets. The markets would all
2 send their forms in, and they would consolidate them. Then
3 what happened this year is we went with a centralized
4 organization that was preparing the forms. They got the
5 information as what was missing when they had all the
6 markets do them, shall I say, centrally located expenses
7 and assets.

8 So they had created a warehouse that was not
9 part of markets. There were certain expenses that were
10 centrally done versus in the markets. The markets didn't
11 pick that up when they were doing their 1205 forms. So
12 when forms got consolidated together they were missing all
13 the centrally located expenses and assets. So the group
14 that is now doing the form looking at the whole company in
15 its entirety picked up those assets, shall I say that were
16 centrally managed assets.

17 MR. MAEL: But why would corporate costs be
18 included in local-level installation maintenance expenses?

19 MRS. PATTERSON: It's your -- our warehouses
20 are no longer in our markets. The warehouses that house
21 all our equipment, all of our boxes and everything are
22 centrally located. They are not -- we don't have costs in
23 our markets anymore for the warehouses.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 THE HEARING OFFICER: Wouldn't that cut
2 costs if you have hundreds of warehouses going down to one
3 or two?

4 MRS. PATTERSON: It would have but when we
5 did the forms previously we did it for our market. We
6 didn't have any warehouse cost in our 1205 because we
7 didn't have any in our market. The piece that got missed
8 was the fact that we had centralized the warehouses. So
9 for the last, I think we centralized warehouses two years
10 ago. The last couple of year's forms didn't include those
11 central warehouses.

12 THE HEARING OFFICER: Why did Time Warner
13 make that decision to centrally locate everything?

14 MRS. PATTERSON: The warehouse?

15 THE HEARING OFFICER: Yes.

16 MRS. PATTERSON: I would assume to cut
17 costs. I'm not sure why Time Warner made that decision.

18 THE HEARING OFFICER: But you just said it
19 didn't cut cost.

20 MRS. PATTERSON: I'm saying that how we
21 filed the forms and the gathered the information the
22 centrally managed warehouses were never included. Okay, so
23 like I handle the Northeast market. So when I did the
24 forms for the Northeast markets two years ago I included

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 the expenses that were part of the Northeast market. I
2 didn't have a warehouse. So I didn't pick up any warehouse
3 expenses because I didn't have any. So I filed the form
4 down just as our Carolina market, our New York City market
5 would because all they did was consolidate the form. They
6 didn't go out and say, hey, we need 1205 information from
7 that central warehouse.

8 THE HEARING OFFICER: So when you say cut
9 costs it's at the corporate level versus the local level?

10 MRS. PATTERSON: Right.

11 MR. MAEL: When the forms were originally
12 prepared in 1994, the costs were unbundled there was an
13 assumption that you were unbundling the equipment from the
14 programming at that point, and it would be no -- so
15 whatever was not unbundled was still part of the
16 programming. Now Time Warner's last year's hourly service
17 charge was the highest we had in the state at \$59.00. Now
18 it's over \$30.00 higher than anyone else at \$97.90. We have
19 them in the 30s. We have them in the low 40s. We have one
20 that cost 60 this year.

21 It appears that any of the costs which were
22 not unbundled because you might not have had them, although
23 they were there was still included in the programming
24 rates. So without an exogenous type adjustment which would

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 remove costs from programming in order to say, well we
2 actually have these costs, because the costs existed. If
3 you have the costs, then they wouldn't have moved across to
4 equipment at that point, but if they were never moved out
5 back when the unbundling took place it would seem to me,
6 there is a possibility that costs, which are still included
7 in the programming element are now being included in the
8 equipment element as well.

9 In addition, if I recall Time Warner has
10 had a history of changing its 1205 structures. They used
11 to have a national one, and then they had one that didn't
12 include New York or LA I believe. There were different
13 ones. They were always at a higher level, but they didn't
14 necessarily include the entire country. They eliminate
15 certain markets. So I am not sure why, if they were
16 presented at that level and all the information was taken
17 and brought up to -- it was aggregated as some type of
18 corporate level why there would not have been an inclusion
19 of additional corporate costs at that point.

20 I am not saying that you would not have
21 turned those costs over to corporate to include or why
22 corporate didn't include the cost, and now to go in and
23 think that the rate that the hourly service charge -- oh,
24 we forgot to include something, and we are going to drive

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 the charge up to \$100.00 an hour which, you know, is 2 ½
2 times other operators of similar size.

3 It seems to me to be quite confusing, but I
4 guess we will start with asking Time Warner to provide an
5 indication of what costs were included in this year's Form
6 1205 that were not included in previous 1205's, and to
7 provide a Form 1205 for this year that removes those costs.
8 So then we can see the specific effect that adding those
9 costs had as opposed to the normal inflationary increases
10 that might have been experienced by the company to get a
11 true grip on exactly what the increase was that was related
12 to the inclusion of these new costs that were not included
13 in the past.

14 MR. FOGARTY: And this is with specific
15 reference to the hourly service charge.

16 MR. MAEL: Well, in order to get to the
17 hourly service charge you are going to have to look at the
18 components which is schedules A and B, and the number of
19 hours. I believe the hours were, let me just double check.
20 The hours increase by well it looks about 40% from 1.32
21 million to 1.83 million. But the cost increased from 78
22 million to 179 million. So we really are going to have to
23 break this apart to appreciate what exactly is going on.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 I think it is important that we get some
2 form of detailed numerical analysis, cost analysis so that
3 I can at least appreciate what the changes that took place
4 were A, from the inflationary stand point and B, from
5 including different costs and C, from perhaps additional
6 costs, which were incurred by the company because of the
7 centralization of the warehouses and such.

8 THE HEARING OFFICER: So that is Record
9 Request 5, what costs were included in this year's 1205
10 that weren't included last year as well as filing a new
11 Form 1205 for this year without those costs included. An
12 example 1205.

13 MR. FOGARTY: Right.

14 MR. MAEL: Time Warner introduced Digital
15 Transporter Adapter; DTAs this year or was that introduced
16 in the past in the Massachusetts properties?

17 MRS. POORE: We introduced them in the past
18 actually. Just last summer is when we did the migration of
19 the PEG channels which was another; we introduced them two
20 or three years ago for the DTAs.

21 MRS. PATTERSON: It has been three years in
22 May.

23 MR. MAEL: So when did basic service tier
24 subscribers -- when did channels to the basic tier get

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 moved to the digital platform so that basic tier only
2 subscribers would need a device without a digital
3 television?

4 MRS. POORE: So they are not all digitized.
5 The basic tier is not 100% digitized at this point. So for
6 instance the public-access channels have been and so there
7 is a significant, you know, customer outreach effort that
8 occurred last summer in order to get the DTA devices to
9 customer homes, so they could view the PEG channels. But
10 if a customer today can still plug their TV in like if they
11 still have an old analog TV, they can still plug in from
12 the wall to the TV and receive -- they still get all the
13 channels but the PEG channels today.

14 MR. MAEL: So the only ones that have been
15 digitized are the PEG channels?

16 MRS. POORE: On the basic tier. There have
17 been, I think, yeah, I'm not sure about CSPAN, there might
18 be a couple but the broadcasters and those channels are
19 still available in analog.

20 MR. MAEL: Is that a companywide policy now
21 to digitize the PEG channels?

22 MRS. POORE: Across the country and we are
23 transitioning -- we have been in the process of
24 transitioning our channels to all digital, to an all-

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 digital lineup. So if a customer has a digital TV set with
2 a quam tuner in it, they don't need a DTA box to pick up
3 the PEG channels or the basic tier. Those are not
4 encrypted.

5 MR. MAEL: Is Time Warner's use of the DTA
6 more so for customers to the higher levels of services who
7 don't want every TV to have access to the premiums and
8 would only want that on one or two, and then they just want
9 to receive the digital channels on the other one or is it
10 something more geared towards basic subscribers with older
11 TVs?

12 MRS. POORE: I think it is primarily the
13 latter. I mean more towards customers with basic TV that
14 they don't want a two-way device. They just want to be
15 able to receive like their PEG channels or whatever other
16 channels that might have been digitized in a simple form.
17 The DTA devices are significantly less. I mean, they are
18 about \$.99 per DTA versus the cost of a digital cable box.

19 MR. MAEL: Is it 1.99 the cost?

20 MRS. POORE: I'm sorry.

21 MR. MAEL: Is it 1.99 the DTA?

22 MRS. POORE: We initially last summer when
23 we sent out the letters for the PEG channels anyway the
24 customers had a free period of a year, and then the DTA

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 boxes would go up to, I think \$.99. On January 1, 2015, so
2 in that scenario they are \$.99.

3 MR. MAEL: And that is the same price for
4 basic only subscriber and an expanded or a higher
5 subscriber?

6 MRS. POORE: Yes, so if you want to get --
7 yes. So if you want to get a little DA device for like a
8 secondary TV in your kitchen or something like that, then
9 it would be a \$.99 charge for that.

10 MR. MAEL: Do you have multiple DTAs, so
11 that one for a subscriber who stays entitled to USA and
12 ESPN and one for basic only subscribers who are only
13 entitled to the basic?

14 MRS. POORE: No, it is the same DTA box
15 across the board.

16 MR. MAEL: Do you map them differently? Is
17 that what it is? You can program them so that so that a
18 basic subscriber only gets the PEG channels.

19 MRS. POORE: I believe so. I would have to
20 follow up with you on that one.

21 MRS. PATTERSON: It is how the channels map
22 down and talk to that box. So the customer -- it's in the
23 billing system behind the scenes. So when we say that

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 customer, A is getting basic service it says you are only
2 getting channels 1-15.

3 MRS. POORE: It does have the filter. It
4 does have the ability to filter it.

5 MRS. PATTERSON: It does have the ability to
6 filter out what it is getting for services. Basically, in
7 the head end it creates these, shall I call them packages
8 of channels and that DTA it says you are allowed this
9 package; you are allowed this package of channels.

10 MR. MAEL: As Record Request 6, could you
11 please provide the most recent rate cards or at least an
12 example of the most recent rate card which includes the DTA
13 on it?

14 MRS. POORE: I have copies for you.

15 MR. MAEL: Can you just highlight that
16 specific charge on there?

17 MRS. POORE: Sure.

18 THE HEARING OFFICER: Are customers given
19 the option of not taking the DTA, and thus they would lose
20 the PEG channels but are they given that option?

21 MRS. POORE: Right, and if they have a
22 digital TV, a newer TV set that has a quam tuner in it they
23 don't need equipment to receive the PEG channels, or if
24 they have a standard converter box. But if a customer

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 doesn't want to have any equipment, and they do have a
2 digital TV set with the quam tuner, then they will be able
3 to receive the entire basic lineup without any additional
4 equipment.

5 MR. MAEL: If a basic subscriber has one of
6 those standard converter boxes, the older ones?

7 MRS. POORE: Like an old --

8 MRS. PATTERSON: Like an old --

9 MR. MAEL: The older ones, right. Those are
10 no longer -- there is no cost justified for those?

11 MRS. PATTERSON: We don't have any standard
12 converters left.

13 MR. MAEL: Just the ones that are in the
14 field?

15 MRS. PATTERSON: We only have digital
16 converters.

17 MR. MAEL: You have the ones in the field
18 still, correct?

19 MRS. PATTERSON: No.

20 MR. MAEL: There is no one with those
21 anymore?

22 MRS. PATTERSON: Not with standard
23 converters, no.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 MR. MAEL: So a basic only subscriber the
2 only option they have is a DTA?

3 MRS. PATTERSON: They can get a digital
4 converter?

5 MR. MAEL: They can get a full blown
6 conversion they can take advantage of On Demand.

7 MRS. POORE: Video on Demand or something
8 like that.

9 MRS. PATTERSON: Right.

10 MR. MAEL: But they would pay the same as
11 any other subscriber.

12 MRS. POORE: Right.

13 MR. MAEL: There is not a basic only
14 converter charge.

15 MRS. POORE: No.

16 MR. MAEL: Are there basic only subscribers
17 who do take the full converter?

18 MRS. PATTERSON: I would have to look it up,
19 but I'm sure that there is probably one customer. Some
20 customers will want the converter to do Pay-Per-View.

21 MR. MAEL: I understand.

22 MRS. PATTERSON: They might only want the
23 basic service, but they want the box to do Pay-Per-View.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 MR. MAEL: Some companies are allowed to
2 have a basic only converter charge to the extent that there
3 is a basic only converter or if there is a demand for it.
4 So this is showing a \$1.50.

5 MRS. POORE: Yeah. So we have also
6 mentioned we have been in the process of rolling out or the
7 digital adapters over the past few years, and we have been
8 as we did last summer with the PEG channels we have a
9 delayed or deferred price. So there has been a grace
10 period, if you will, for customers, so they don't have to
11 pay it. So there are about 80% of our customers who have
12 those DTA devices are not paying for them today. So that
13 those, for instance, we will get an influx in January of
14 2015 when -- well they will probably push that up.

15 MRS. PATTERSON: It will probably be March
16 or April.

17 MRS. POORE: When we do the rate increase.
18 But at this point customers are notified that if you
19 received a DTA box as part of the -- to receive your PEG
20 channels that you will start to be charged for those on
21 January 1, 2015.

22 MR. MAEL: It will be \$1.50?

23 MRS. POORE: So those are \$.99. I think
24 what, as I understand what -- why it is a \$1.50, I think

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 that is the maximum permitted rate for the DTAs, but that
2 is -- they listed that on the rate card.

3 MR. MAEL: It is actually 2.11 is your
4 proposed maximum for DTAs.

5 MRS. POORE: There are some --

6 MRS. PATTERSON: There are some markets that
7 the rate is \$1.50. They put the highest rate on the rate
8 cards that we charge.

9 THE HEARING OFFICER: You said that -- you
10 may have said this but some basic subscribers are charged
11 currently, and some are not. Is that correct?

12 MRS. POORE: Yes.

13 THE HEARING OFFICER: What is the reason for
14 that disparity?

15 MRS. POORE: It is when they received the
16 digital adapter and under, you know, if there was an
17 initiative to digitize a different channel, for instance,
18 and there was a grace period for the box at that point. So
19 I mean they have been staggered I guess. I mean this --

20 THE HEARING OFFICER: So it is a staggered
21 roll out?

22 MRS. POORE: It has been a rolling process
23 of digitizing these channels in order to get to 100%
24 digital lineup. So some customers take advantage of it,

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 and some don't. It is very similar to a promotional
2 introductory offer in a sense to get the digital adapter at
3 home and then give them that grace period between when we
4 start to charge for it. But again, a significant amount
5 around the 80% mark of our customers are not paying for
6 those devices today.

7 THE HEARING OFFICER: But will be starting
8 in 2015.

9 MRS. POORE: Yeah. The group from, yeah,
10 the most recent group as part of the digitalizing the PEG
11 channels in January 2015.

12 THE HEARING OFFICER: Okay. You mentioned
13 at the beginning the proposed merger with Comcast. I was
14 wondering if you could speak to that just briefly as much
15 as you can and specifically what does it mean for next
16 year's rate filing here at the DCT, if you know at this
17 time?

18 MRS. POORE: I don't think we have -- I
19 think it is pretty far out at this point. I don't know.
20 Can I defer to John?

21 MR. FOGARTY: I haven't been sworn but I can
22 talk about it. We and Comcast have said that we would like
23 to close this deal as soon as we have the ability to do it
24 having gotten the necessary regulatory approvals. I think

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 the earliest estimates were that hopefully that could be
2 done by the end of this year whether that will happen or
3 not I think is quite questionable.

4 As you are all aware there are now for many
5 systems not the Time Warner Cable systems in Massachusetts
6 but Time Warner Cable systems in other locations a second
7 transfer that has been agreed to because Comcast has agreed
8 with Charter to transfer some of the systems that are
9 required from Time Warner Cable to Charter. So there is
10 sort of now that second step and I think there are a
11 related transaction that involves Charter systems in the
12 Commonwealth.

13 So I don't think anybody at this point has a
14 definite idea when it will happen. We hope still that it
15 can occur at the end of this year but it is possible it can
16 happen hopefully early 2015. Whether or not it is a Time
17 Warner Cable subsidiary or a Comcast subsidiary that files
18 the forms for the next round, I think is a bit uncertain
19 now. But in the deal that we have with Comcast there will
20 be no change in the identity of the company that holds the
21 Massachusetts franchises and filed these forms. So it will
22 be the same entity filing them the next time whether it is
23 as an ultimate subsidiary of Comcast or ultimate subsidiary

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE -- 06/12/14
D.T.C. 13-10

1 of Time Warner Cable, I think is just uncertain at this
2 time.

3 THE HEARING OFFICER: Okay. Thank you. We
4 will go ahead and take five minutes. I will suspend the
5 record, and then we can come back and close up.

6 MRS. POORE: Okay.

7

8

(BREAK)

9

10 THE HEARING OFFICER: All right, I just
11 wanted to clarify a couple of things on the Record
12 Requests. Starting with Record Request 1, which involves
13 the 2.25 broadcast fee, I would like to add a part C. So
14 Record Request 1C will be to provide Time Warner's policy
15 with respect to messaging that fee to consumers. So
16 whatever the company tells consumers when they call in
17 whether you want to provide a script that is fine. If you
18 want to provide the policy whatever, however, you want to
19 explain that messaging.

20 MRS. POORE: Just -- we did follow -- we
21 did send information out to customers as part of the
22 notification for the rate increase, but we can certainly --

23 THE HEARING OFFICER: Yeah, if the customer
24 calls into a service center.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 MRS. POORE: Like what do we say or how to
2 explain --

3 THE HEARING OFFICER: Yes.

4 MRS. POORE: Sure.

5 MR. MAEL: You sent an explanation out to
6 customers?

7 MRS. POORE: We did in a letter to
8 customers.

9 MR. MAEL: Then including that would be --

10 MRS. POORE: Include the customer letter.

11 MR. FOGARTY: We will include a copy of the
12 customer letter.

13 MRS. POORE: You got it.

14 THE HEARING OFFICER: Then for Record
15 Request 2, Mr. Fogarty, I believe you heard this but just
16 for the record, this is the Williamstown Record Request
17 also, in addition to answering the question also refile the
18 Form 1240.

19 MR. FOGARTY: Yes, it is just to clarify
20 whether, in fact, Williamstown is subject --

21 MR. MAEL: No Williamstown is to clarify
22 whether Time Warner actually added Williamstown's cost into
23 the Form, and if they did to please remove those costs and
24 refile the form since Williamstown is not regulated.

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

1 MR. FOGARTY: Okay.

2 THE HEARING OFFICER: Correct. Okay, then
3 we started to ask a Record Request 6 but Mrs. Poore handed
4 a rate card that we were asking for, so rather than a
5 Record Request 6; I will just mark that rate card as
6 Exhibit 5, for the record.

7 MRS. POORE: Thank you.

8 THE HEARING OFFICER: I will set a due
9 date, for the Record Request as Wednesday July 9, 2014. Is
10 there anything else Time Warner would like to address?

11 MR. FOGARTY: I don't believe we have
12 anything more.

13 THE HEARING OFFICER: Thank you very much
14 for coming out. I will take this under advisement and
15 close the record.

16

17

18

19

20

(The record was closed at 12:12 PM)

21

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE - 06/12/14
D.T.C. 13-10

CERTIFICATE

I, Tammy Hillery, a Court-Approved Transcriptionist for Office Solutions Plus, LLC, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Tammy Hillery, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Tammy Hillery, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of this action.

Proceedings recorded by electronic sound recording equipment. Transcript produced from computer.

//Tammy Hillery// Date: June 12, 2014

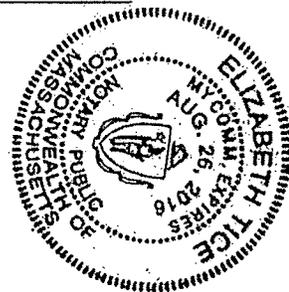
Tammy Hillery, Transcriptionist for

Office Solutions Plus, LLC

P.O. Box 646

Weston, MA 02493

Phone: (617-471-3510)

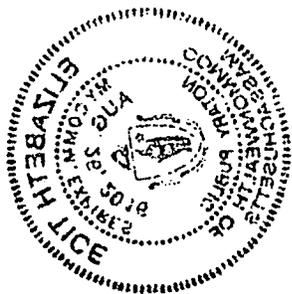


Elizabeth Tice

//Elizabeth Tice// Date: June 12, 2014

Elizabeth Tice, President, OfficeSolutionsPlusLLC.com

My commission expires: August 26, 2016



Handwritten signature or text

Commonwealth of Massachusetts
Department of Telecommunications and Cable
D.T.C. 13-10 R

<u>\$</u>	1-4 [1] 14:7 14.56 [2] 11:6 12:17 15 [2] 3:11 8:8 1-5 [1] 14:21 1-7 [1] 23:16 179 [1] 28:22 18 [1] 7:20 19 [1] 5:21 1994 [1] 26:12 1a [2] 3:7 14:4 1b [2] 3:8 14:4 1c [2] 3:9 40:12 1e [2] 1:12 4:7	4c [1] 3:14	adding [2] 7:5 28:8 addition [3] 20:15 27:9 41:17 additional [9] 6:2 7:5 18:14, 17,20 19:3 27:19 29:5 34:3 additionally [1] 5:18 address [1] 42:10 adjust [1] 4:10 adjusted [1] 9:2 adjustment [3] 14:15 20:17 26:24 adjustments [3] 20:4, 15 21:3 administrative [1] 43:7 advance [1] 6:21 advances [1] 7:4 advantage [2] 35:6 37:24 advisement [1] 42:14 age [1] 15:18 aggregated [1] 27:17 ago [3] 25:10 24 29:20 agreeable [1] 6:12 agreed [3] 9:10 39:7,7 ahead [2] 8:15 40:4 airing [1] 13:16 allowances [1] 15:2 allowed [3] 33:8,9 36:1 already [2] 10:16 13:19 although [1] 26:22 amount [1] 38:4 analog [2] 30:11,19 analysis [2] 29:2,2 android [1] 8:2 announced [1] 7:4 another [1] 28:19 answer [3] 6:15 9:12 21:19 answering [1] 41:17 anybody [1] 39:13 anyway [1] 31:23 apart [3] 20:2, 10 28:23 appearances [1] 2:1 appears [1] 26:21 apple [1] 8:1 applications [1] 7:22 appointment [1] 8:12 appointments [1] 8:15 appreciate [2] 28:23 29:3 appropriate [1] 14:15 approvals [1] 38:24 april [1] 36:16 arbitrary [1] 13:13 areas [1] 9:7 around [1] 38:5 assessed [1] 18:14 assets [5] 23:18 24:7, 13, 15, 16
\$.50 [1] 18:12 \$.99 [5] 31:18 32:1, 2, 9 36:23 \$1.50 [4] 36:4, 22, 24 37:7 \$1.57 [1] 11:17 \$100.00 [1] 28:1 \$14.56 [1] 12:16 \$2.25 [4] 9:1, 22 10:7 12:17 \$2.79 [1] 18:12 \$2.89 [1] 10:6 \$30.00 [1] 26:18 \$59.00 [1] 26:17 \$97.90 [1] 26:18	<u>2</u>	<u>5</u>	
<u>I</u>	2 [7] 3:10 4:14 5:21 14:14, 19 28:1 41:15 2.11 [1] 37:3 2.25 [1] 10:10, 12, 13 11:1, 3, 10 12:2, 3, 7 14:5 40:11 2.89 [3] 10:11, 12 12:1 20 [1] 7:5 2001 [1] 19:18 2013 [2] 4:9 5:19 2014 [9] 1:15 4:7, 14 5:21 6:20 10:1 42:9 43:16, 22 2015 [6] 32:1 36:14, 21 38:8, 11 39:16 2016 [1] 43:24 207-253-2217 [1] 2:18 21 [2] 3:12, 13 212-364-8464 [1] 2:11 215 [1] 7:7 23 [1] 3:14 2-4 [1] 3:5 24/7 [1] 8:12 26 [1] 43:24 27 [3] 4:9, 14 5:19 29 [1] 3:15	5 [7] 3:3, 4, 5, 6, 15 29:9 42:6 50% [1] 8:8 5th [1] 4:18	
<u>0</u>	<u>3</u>	<u>6</u>	
//Elizabeth [1] 43:22 //tammy [1] 43:16	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	6 [3] 33:10 42:3, 5 60 [2] 2:9 26:20 617 [1] 43:27 617-471-3510 [1] 43:21 646 [1] 43:19	address [1] 42:10 adjust [1] 4:10 adjusted [1] 9:2 adjustment [3] 14:15 20:17 26:24 adjustments [3] 20:4, 15 21:3 administrative [1] 43:7 advance [1] 6:21 advances [1] 7:4 advantage [2] 35:6 37:24 advisement [1] 42:14 age [1] 15:18 aggregated [1] 27:17 ago [3] 25:10 24 29:20 agreeable [1] 6:12 agreed [3] 9:10 39:7,7 ahead [2] 8:15 40:4 airing [1] 13:16 allowances [1] 15:2 allowed [3] 33:8,9 36:1 already [2] 10:16 13:19 although [1] 26:22 amount [1] 38:4 analog [2] 30:11,19 analysis [2] 29:2,2 android [1] 8:2 announced [1] 7:4 another [1] 28:19 answer [3] 6:15 9:12 21:19 answering [1] 41:17 anybody [1] 39:13 anyway [1] 31:23 apart [3] 20:2, 10 28:23 appearances [1] 2:1 appears [1] 26:21 apple [1] 8:1 applications [1] 7:22 appointment [1] 8:12 appointments [1] 8:15 appreciate [2] 28:23 29:3 appropriate [1] 14:15 approvals [1] 38:24 april [1] 36:16 arbitrary [1] 13:13 areas [1] 9:7 around [1] 38:5 assessed [1] 18:14 assets [5] 23:18 24:7, 13, 15, 16
<u>1</u>	<u>4</u>	<u>7</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	4 [5] 5:21 20:24 21:1, 17 23:8 40 [1] 3:9 40% [1] 28:20 40s [1] 26:19 42 [1] 3:6 43 [1] 3:16 4-42 [1] 3:2 471-3510 [1] 43:27 4a [1] 3:12 4b [1] 3:13	7 [3] 33:10 42:3, 5 60 [2] 2:9 26:20 617 [1] 43:27 617-471-3510 [1] 43:21 646 [1] 43:19	
<u>1</u>	<u>3</u>	<u>8</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	8 [3] 33:10 42:3, 5 60 [2] 2:9 26:20 617 [1] 43:27 617-471-3510 [1] 43:21 646 [1] 43:19	
<u>1</u>	<u>3</u>	<u>9</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	9 [2] 5:9 42:9	
<u>1</u>	<u>3</u>	<u>10</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	10 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>11</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	11 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>12</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	12 [1] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>13</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	13 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>14</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	14 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>15</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	15 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>16</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	16 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>17</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	17 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>18</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	18 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>19</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	19 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>20</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10 1.32 [1] 28:20 1.83 [1] 28:21 1.99 [2] 31:19, 21 100 [1] 8:7 100% [2] 30:5 37:23 1000 [2] 1:13 4:8 10023 [1] 2:10 11:00 [1] 4:6 11:07 [1] 1:15 1-15 [1] 33:2 1-16 [1] 6:3 118 [1] 2:16 12 [4] 1:15 4:7 43:16, 22 12.31 [3] 11:3, 4, 10 12.99 [2] 11:14, 15 12:12 [2] 1:15 42:16 1205 [14] 1:6 3:4 5:19 20:11 21:7 24:11 25:6 26:6 27:10 28:6, 7 29:9, 11, 12 1205's [1] 28:6 1240 [6] 1:6 3:5 5:20 14:19 15:22 41:18 13 [1] 3:7 13-10 [3] 1:3 4:4 43:26 14 [2] 3:8, 10	3 [3] 3:11 15:20 17:22 30s [1] 26:19 31 [1] 7:6	20 [2] 1:15 43:25 1/2 [1] 28:1	
<u>1</u>	<u>3</u>	<u>21</u>	
1 [6] 3:4 5:20 13:21 32:1 36:21 40:10			

Commonwealth of Massachusetts
 Department of Telecommunications and Cable
 D.T.C. 13-10 R

assistant [1] 2:7 associated [1] 10:9 assume [2] 20:11 25:16 assumption [2] 10:7 26:13 attached [1] 22:7 attorney [1] 6:7 august [1] 43:24 available [3] 7:21,22 30:19 aware [3] 8:22 9:9 39:4 <hr/> <p style="text-align:center">B</p> <hr/> back [3] 10:7 27:5 40:5 barrington [3] 1:7 4:12 5:22 base [1] 8:5 based [3] 7:11 15:16 20:13 basic [30] 4:10 6:19 9:1,4,7 10:4 11:2 14:12 29:23,24 30:1,5,16 31:3,10,13 32:4, 12,13,18 33:1 34:3,5 35:1, 13,16,23 36:2,3 37:10 basically [3] 7:10 11:16 33: 6 became [1] 6:20 begin [1] 9:19 beginning [1] 38:13 behalf [1] 2:5 behind [1] 32:23 believe [8] 6:10 16:22 21:5 27:12 28:19 32:19 41:15 42:11 believes [1] 23:10 below [1] 9:7 bench [1] 5:14 berkshire [3] 4:14,16 8:19 berkshires [4] 4:17 14:24 15:1 16:2 better [1] 7:16 betting [1] 16:8 between [4] 4:18 16:10 19: 24 38:3 bill [2] 11:10 12:9 billing [1] 32:23 bills [1] 8:23 bit [1] 39:18 blown [1] 35:5 board [2] 2:2 32:15 booked [1] 23:18 boston [2] 1:14 4:8 box [32] 18:18,23 19:2,5,6,7, 22,22,24 20:4,6,13,18 21:2, 22,23 22:1,2,5,6,12,18,18 31:2,18 32:14,22 33:24 35: 23 36:19 37:18 43:19 boxes [11] 18:14,15,16,17, 20 19:4 20:16 22:4 24:21 32:1 34:6	branch [1] 5:10 break [4] 17:16,19 28:23 40: 7 breaking [1] 23:7 briefly [1] 38:14 broadband [1] 8:6 broadcast [7] 8:23 9:21,22 10:9 11:23 14:1 40:11 broadcaster [1] 12:18 broadcasters [3] 9:1 13:16 30:18 broke [1] 20:10 broken [2] 12:9 18:7 brought [1] 27:17 build [2] 13:7,8 built [6] 10:4,11,16 12:22 13: 3,6 bureau [1] 8:19 <hr/> <p style="text-align:center">C</p> <hr/> cable [25] 1:2,5,11 2:5 3:4,5, 6 4:4,9,15 6:7,9 7:1,3,4 8: 18 9:10 18:15 31:18 39:5,6, 9,17 40:1 43:25 cable's [1] 6:19 calculating [1] 23:22 calculation [1] 23:20 calculations [1] 12:1 call [6] 12:6,6,11,18 33:7 40: 14 calls [4] 8:10,11,13 40:22 came [2] 12:4,7 can't [1] 10:20 card [9] 3:6 18:1 33:12 37:2 42:4,5 cards [2] 33:11 37:8 carolina [1] 26:4 carried [1] 16:15 carroll [3] 1:10 2:3 4:5 case [2] 12:1 22:10 cast [1] 4:15 center [1] 40:22 centers [1] 12:6 central [2] 25:11 26:7 centralization [1] 29:7 centralized [4] 23:24 24:3 25:8,9 centrally [8] 23:24 24:6,10, 13,16,22 25:13,22 certain [6] 5:18 15:17 19:23 24:9 27:15 certainty [2] 6:14 40:20 certificate [2] 3:16 43:1 certify [3] 43:3,6,9 change [5] 9:3,4 18:22 19:1 39:20	changes [2] 18:20 29:3 changing [1] 27:10 channel [4] 7:8,9,11 37:17 channels [33] 7:5,6,8,11,17, 21 22:2 29:19,24 30:6,9,13, 13,15,18,21,24 31:3,9,15, 16,23 32:18,21 33:2,8,9,20, 23 36:8,20 37:23 38:11 charge [16] 13:16 18:2 19:9 23:18,22 26:17 27:23 28:1, 15,17 32:9 33:16 35:14 36: 2 37:8 38:4 charged [4] 18:14,16 36:20 37:10 charging [6] 9:21 12:10,11 19:18,21 20:1 charter [3] 39:8,9,11 check [2] 19:15 28:19 cheshire [1] 14:9 chief [1] 2:7 circle [1] 2:9 city [1] 26:4 clarification [2] 13:11 16:21 clarify [5] 16:14 21:10 40:9 41:19,21 clear [2] 5:1 23:16 close [4] 5:13 38:23 40:5 42: 15 closed [1] 42:16 coid [1] 16:24 columbus [1] 2:9 comcast [9] 9:10,11 22:23 38:13,22 39:7,17,19,23 come [2] 14:4 40:5 coming [1] 42:14 comment [2] 3:3 5:10 commenters [1] 5:12 comments [1] 4:19 commission [2] 12:20 43:24 commonwealth [2] 1:1 39: 12 communities [2] 9:3 17:2 community [8] 4:15,16,16 12:19 13:14 14:1,8,9 companies [1] 36:1 company [9] 12:4 13:12,22 22:22 24:14 28:10 29:6 39: 20 40:14 companywide [1] 30:20 competition [1] 5:15 compliance [1] 43:7 component [1] 21:22 components [1] 28:18 computer [1] 43:15 confusing [1] 28:3 connection [1] 6:18	conservative [1] 10:10 consolidate [2] 24:2 26:5 consolidated [1] 24:12 consumers [2] 40:13,14 contained [1] 13:19 continued [1] 8:9 continues [1] 7:1 contribute [1] 11:22 conversion [1] 35:6 converter [8] 33:24 34:6 35: 4,14,17,20 36:2,3 converters [3] 34:12,16,23 copied [1] 15:2 copies [3] 5:12 6:22 33:14 copy [4] 15:9,21 16:12 41: 11 copyright [9] 14:23,24 15:8, 12,16,22 16:6 17:13,14 corporate [7] 23:19 24:17 26:9 27:18,19,21,22 corporation [1] 9:11 correct [5] 15:6 18:5 34:18 37:11 42:2 cost [20] 8:24,24 13:23 14:9 18:17 20:4 21:6 22:11,12 23:7 25:6,19 26:20 27:22 28:21 29:2 31:18,19 34:10 41:22 costs [31] 10:8,16 12:18 13: 2,5 14:8,15 23:21 24:17,22 25:2,17 26:9,12,21 27:1,2,2, 3,6,19,21 28:5,7,9,12 29:5, 6,9,11 41:23 counsel [3] 2:7 6:4 43:10 country [3] 12:5 27:14 30: 22 county [1] 8:19 couple [4] 19:16 25:10 30: 18 40:9 court [1] 43:8 court-approved [1] 43:2 created [1] 24:8 creates [1] 33:7 crossover [1] 16:7 cspan [1] 30:17 curious [1] 11:22 currently [1] 37:11 customer [16] 7:2 8:23 12: 13 21:7 22:1 30:7,9,10 31: 1 32:22 33:1,24 35:19 40: 21 41:10,12 customers [21] 7:6,13 8:10, 15 9:6 10:20 12:6,9 31:6, 13,24 33:18 35:20 36:10,11, 18 37:24 38:5 40:19 41:6,8 cut [4] 25:1,16,19 26:8
--	---	---	--

Commonwealth of Massachusetts
 Department of Telecommunications and Cable
 D.T.C. 13-10 R

D			
<p>d.t.c [2] 1:3 43:26 da [1] 32:7 date [3] 42:9 43:16,22 day [1] 8:11 dct [2] 6:3 38:16 deal [2] 38:23 39:19 decide [1] 13:8 decided [3] 13:12 20:5 23:21 decision [2] 25:13,17 decrease [1] 9:5 defer [1] 38:20 deferred [1] 36:9 defers [1] 8:24 definite [1] 39:14 delayed [1] 36:9 demand [5] 7:19,20 35:6,7 36:3 department [10] 1:2,11 4:3,6 5:10,17 9:9 14:11,12 43:25 departments [3] 4:7 5:15,24 depending [2] 12:19 15:18 depends [1] 20:7 despite [1] 13:18 detailed [2] 8:20 29:2 developed [1] 22:22 device [3] 30:2 31:14 32:7 devices [5] 8:3 30:8 31:17 36:12 38:6 didn't [12] 24:10 25:6,7,10,19 26:2,2,3,8 27:11,13,22 difference [1] 19:23 different [6] 15:19 22:21,23 27:12 29:5 37:17 differently [1] 32:16 digital [18] 18:16 22:8 29:14 30:1,2,24 31:1,1,9,18 33:22 34:2,15 35:3 36:7 37:16,24 38:2 digitalizing [1] 38:10 digitize [2] 30:21 37:17 digitized [4] 30:4,5,15 31:16 digitizing [1] 37:23 directive [1] 43:8 directly [1] 23:18 discern [1] 20:14 disparity [1] 37:14 distance [8] 15:2,17,20 16:3,15,23 17:11,15 division [1] 5:16 docket [2] 1:3 4:4 documents [1] 5:18 doesn't [2] 17:19 34:1</p>	<p>doing [3] 11:1 24:11,14 don't [17] 12:11 13:4,7 15:14 22:8 24:22 31:2,7,14 33:23 34:11 36:10 38:1,18,19 39:13 42:11 done [4] 23:24 24:1,10 39:2 double [1] 28:19 down [3] 25:2 26:4 32:22 drive [1] 27:24 dta [14] 30:8 31:2,5,17,18,21,24 32:14 33:8,12,19 35:2 36:12,19 dtas [5] 29:15,20 32:10 37:1,4 due [1] 42:8 duly [1] 4:13</p>	<p>everyone [3] 4:2,20 22:17 everything [3] 12:7 24:21 25:13 evidentiary [4] 1:9 4:4 5:13,14 exactly [2] 28:11,23 example [3] 10:5 29:12 33:12 exceeds [1] 12:2 excuse [3] 10:15 15:3 20:14 exhibit [5] 3:4,5,6 5:20 42:6 exhibits [2] 5:18,21 existed [1] 27:2 exogenous [1] 26:24 expanded [1] 32:4 expenses [6] 24:6,9,13,18 26:1,3 experience [1] 7:2 experienced [1] 28:10 expires [1] 43:24 explain [5] 20:21 21:2 23:20 40:17 41:2 explained [1] 20:18 explains [1] 23:17 explanation [1] 41:5 extent [1] 36:2</p>	<p>filter [3] 33:3,4,6 filtering [1] 7:17 finally [1] 5:23 finance [1] 2:20 financial [1] 6:10 financially [1] 43:12 find [4] 7:13,17 20:7,12 fine [2] 16:11 40:15 first [3] 18:23 19:2,5 five [1] 40:4 fogarty [19] 2:6 6:6,6,14 15:3 16:14 17:4 21:12 22:15 23:5,13 28:14 29:13 38:21 41:11,15,19 42:1,11 follow [4] 9:20 23:1 32:20 40:18 foregoing [2] 43:4,6 forgot [1] 27:24 form [27] 1:6 3:4,5 5:19 10:5 13:19 14:2,16,18 16:20 17:19 21:3,7,11 23:12,24 24:14 26:3,5 28:5,7 29:2,11 31:16 41:18,23,24 format [1] 43:8 forms [15] 1:6 5:20 10:21 15:22 24:2,4,11,12 25:5,10,21,24 26:11 39:18,21 franchise [1] 13:5 franchise-related [1] 13:2 franchises [1] 39:21 free [2] 8:10 31:24 full [2] 35:5,17 further [3] 43:6,9,12 future [1] 6:1</p>
E			
	<p>each [4] 14:1 16:15 17:11,15 eagle [1] 4:14 earliest [1] 39:1 early [1] 39:16 easier [1] 7:18 effect [1] 28:8 effective [1] 6:20 effort [1] 30:7 elected [2] 5:6 13:22 electronic [2] 18:5 43:14 element [2] 27:7,8 eliminate [1] 27:14 elizabeth [1] 43:23 embedded [2] 18:6,9 employed [1] 43:10 encrypted [1] 31:4 end [3] 33:7 39:2,15 engineering [1] 23:4 enhanced [1] 7:15 ensure [1] 4:21 entered [1] 5:11 entire [4] 12:4,5 27:14 34:3 entirety [1] 24:15 entitled [2] 32:11,13 entity [1] 39:22 environment [1] 7:21 equipment [17] 4:11 6:19 18:10,16 19:12,20 20:16 21:8,11 24:21 26:13 27:4,8 33:23 34:1,4 43:15 especially [1] 20:15 espn [1] 32:12 establish [2] 4:10 20:5 established [1] 12:4 estimate [2] 10:10 22:3 estimates [1] 39:1 even [2] 10:16 19:7</p>	<p>fact [4] 10:8 13:18 25:8 41:20 fall [1] 20:11 familiar [1] 10:21 far [1] 38:19 faster [1] 7:17 fastest [1] 8:7 favorite [1] 7:13 fax [1] 2:12 fcc [6] 1:6 3:4,5 5:19,20 21:7 feature [1] 8:15 featured [1] 7:20 fee [15] 8:23 9:1,21,22 10:7,11,12,13 11:1 12:11,18,20 14:24 40:11,13 fees [4] 10:6 11:23 14:2,23 few [1] 36:7 field [2] 34:14,17 figure [1] 20:22 file [1] 6:1 filed [8] 4:10 5:19,20,24 20:11 25:21 26:3 39:21 files [1] 39:17 filing [8] 15:22 16:13 17:8,13,14 29:10 38:16 39:22 filings [5] 15:8,13 16:6,18 20:14</p>	<p>gathered [1] 25:21 geared [1] 31:10 genera [2] 7:11,16 general [1] 15:13 gestures [1] 5:2 gets [2] 22:18 32:18 getting [3] 33:1,2,6 give [1] 38:3 given [3] 22:17 33:18,20 got [4] 24:4,12 25:7 41:13 gotten [1] 38:24 government [3] 2:14 5:7 6:8 grace [3] 36:9 37:18 38:3 grandfathered [4] 15:1,11 16:22,22 great [3] 1:8 4:12 5:21 greater [1] 8:5 grip [1] 28:11 group [6] 6:10 20:21 23:4 24:13 38:9,10</p>
F			
G			

Commonwealth of Massachusetts
Department of Telecommunications and Cable
D.T.C. 13-10 R

<p>grouping [1] 7:11 guess [6] 14:13 21:15 23:6, 9 28:4 37:19 guide [6] 7:15 18:4,5 21:9, 10 22:9</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hand [1] 9:15 handed [1] 42:3 handle [1] 25:23 happen [3] 39:2,14,16 happened [2] 23:23 24:3 happy [1] 9:12 hard [1] 20:17 haven't [2] 15:7 38:21 head [1] 33:7 headroom [1] 11:21 heard [1] 41:15 hearing [43] 1:9,10,12 4:2,5, 7 5:13,13,15 6:13,16,21 9: 14,18 14:3,18 17:10,21 18: 22 20:23 21:16 23:6 25:1, 12,15,18 26:8 29:8 33:18 37:9,13,20 38:7,12 40:3,8, 21 41:3,14 42:2,8,13 43:11 hearings [1] 4:4 help [1] 10:22 heroby [1] 43:3 hi-def [1] 7:7 hi-definition [1] 7:6 higher [4] 26:18 27:13 31:6 32:4 highest [2] 26:17 37:7 highlight [1] 33:15 hillery [4] 43:2,6,9,17 hillery// [1] 43:16 history [1] 27:10 holds [1] 39:20 home [4] 7:23,24 8:17 38:3 homes [1] 30:9 hope [1] 39:14 hopefully [2] 39:1,16 hour [1] 28:1 hourly [6] 23:17,22 26:16 27: 23 28:15,17 hours [3] 28:19,19,20 house [2] 18:15 24:20 however [2] 10:10 40:16 huge [1] 12:11 hundreds [1] 25:2</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>I'd [2] 15:8 19:15 I'm [1] 12:15 13:12 16:6,8 18:5 21:9 25:17,20 30:17 31:20 35:19</p>	<p>idea [1] 39:14 identfy [1] 6:4 identity [1] 39:20 implemented [1] 8:23 important [1] 29:1 imposed [1] 8:24 improve [1] 7:2 include [9] 17:20 25:10 27: 12,14,21,22,24 41:10,11 included [15] 11:23 14:7 23: 19 24:18 25:22,24 26:23 27:6,7 28:5,6,12 29:9,10,11 includes [1] 33:12 including [8] 7:5,8 12:17 14: 9 23:18,21 29:5 41:9 Inclusion [2] 27:18 28:12 Increase [8] 8:6,24 11:1 23: 17 28:11,20 36:17 40:20 Increased [4] 7:19 8:7,8 28: 21 increases [1] 28:9 increasing [1] 11:16 incurred [1] 29:6 Index [1] 3:1 indicate [2] 16:1 23:10 indicated [2] 14:21 22:17 indicates [1] 14:7 indicating [1] 13:15 indication [2] 18:2 28:5 inflationary [2] 28:9 29:4 Influx [1] 36:13 information [10] 5:24 13:19 14:6,20 23:16 24:5 25:21 26:6 27:16 40:19 initial [1] 5:16 initially [1] 31:22 Initiative [1] 37:17 installation [3] 4:11 6:20 24: 18 instance [3] 30:6 36:13 37: 17 instead [1] 11:1 interactive [1] 7:15 interested [1] 43:13 interesting [1] 15:7 international [1] 7:8 intervene [1] 5:17 introduce [1] 19:8 Introduced [5] 10:2 29:14, 15,17,19 introducing [1] 10:8 Introductory [1] 38:2 intuitively [1] 7:12 invest [1] 7:1 involves [2] 39:11 40:10 ios [1] 8:1</p>	<p>ir-1-1 [1] 6:3 Isn't [2] 21:9,11 issue [1] 13:1 it's [9] 13:19 15:15 18:16 19: 1 22:2 24:19 26:9,18 32:22 itself [3] 20:19 21:22 22:2</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>january [4] 32:1 36:13,21 38: 11 john [3] 2:6 6:6 38:20 Johnson [1] 2:16 joined [1] 6:7 Joining [1] 5:14 july [1] 42:9 June [6] 1:15 4:6,14 5:9 43: 16,22 Justified [2] 21:7 34:10</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>kind [1] 20:17 kindle [1] 8:3 kitchen [1] 32:8 knows [1] 21:19</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>la [1] 27:12 larger [1] 16:22 last [12] 7:3,10 11:13 14:22 25:9,10 26:16 29:10,18 30: 8 31:22 36:8 lastly [1] 9:9 late [1] 5:24 latter [1] 31:13 launched [3] 7:9 8:2,14 least [4] 16:6 19:16 29:3 33: 11 lee [6] 9:6 10:5,14 11:3,13 12:1 left [1] 34:12 legal [1] 2:8 legislature [1] 5:5 lenox [6] 9:6 10:5,14 11:3, 14 12:1 less [4] 18:17 19:3,6 31:17 lesser [1] 19:7 let's [1] 23:1 letter [3] 41:7,10,12 letters [1] 31:23 level [7] 9:2 23:19 26:9,9 27: 13,16,18 levels [1] 31:6 linear [1] 7:5 lineup [5] 7:9,11 31:1 34:3 37:24 list [2] 16:17 17:15 listed [2] 21:11 37:2</p>	<p>listing [1] 16:15 lists [1] 18:11 little [2] 19:6 32:7 live [1] 8:20 liztice@officesolutionsplus llc.com [1] 43:27 llc [2] 43:3,18 local [4] 5:7 8:19,20 26:9 local-level [1] 24:18 locate [1] 25:13 located [4] 4:8 24:6,13,22 location [1] 15:19 locations [1] 39:6 longer [3] 14:10 24:20 34:10 look [3] 15:9 28:17 35:18 looking [2] 20:13 24:14 looks [2] 22:23 28:20 lose [1] 33:19 loud [1] 5:1 low [1] 26:19</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>ma [1] 43:20 made [4] 20:4,15 21:3 25:17 mael [73] 2:4 5:15 9:18,20 10:2,4 11:4,6,9,13,16,20 12: 15,22 13:1,7,11,18 14:6,20 15:6,12,15 16:1,5,10,20 17: 12,16 18:1,11 19:8,19 20:3, 13 21:1 22:3,10,16 23:9,15 24:17 26:11 28:16 29:14, 23 30:14,20 31:5,19,21 32: 3,10,16 33:10,15 34:5,9,13, 17,20 35:1,5,10,13,16,21 36:1,22 37:3 41:5,9,21 maine [1] 19:17 maintenance [1] 24:18 major [2] 7:4 20:17 managed [2] 24:16 25:22 manager [1] 2:20 many [1] 39:4 map [2] 32:16,21 march [4] 6:20 10:1 12:24 36:15 mark [2] 38:5 42:5 marked [3] 5:18,21 6:3 market [6] 25:5,7,23 26:1,4, 4 markets [11] 24:1,1,6,9,10, 10,20,23 25:24 27:15 37:6 massachusetts [9] 1:1,14 7: 3,7 19:15,17 29:16 39:5,21 matter [2] 1:5 5:16 maximum [3] 9:7 37:1,4 mean [8] 21:14 22:20,22 31: 13,17 37:19,19 38:16</p>
---	---	--	---

Commonwealth of Massachusetts
Department of Telecommunications and Cable
D.T.C. 13-10 R

<p>megabits [2] 8:7,9 melinda [3] 2:13 6:8,11 members [2] 5:4,8 memorialized [1] 4:21 mentioned [2] 36:6 38:12 merger [2] 9:12 38:13 message [1] 8:15 messaging [2] 40:13,17 michael [3] 2:4 5:15 23:23 might [6] 9:13 26:22 28:10 30:17 31:16 35:22 migration [1] 29:18 million [4] 28:21,21,22,22 minutes [1] 40:4 missed [1] 25:7 missing [2] 24:5,12 money [1] 12:12 morning [1] 4:2 most [5] 16:11 19:6 33:11, 12 38:10 most-recent [2] 15:21 16:13 motion [1] 6:1 moved [3] 27:3,4 30:1 much [3] 22:18 38:14 42:13 multiple [2] 18:15 32:10</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name [2] 4:5 6:6 national [2] 7:9 27:11 navigator [2] 18:2,3 19:11, 14,22 20:1,5,18 21:2,6,6,21 22:4,6,12,18,21,21,22,23 23:11 necessarily [2] 11:1 27:14 necessary [1] 38:24 need [7] 6:1 16:5 21:6 26:6 30:2 31:2 33:23 needing [1] 8:10 neither [1] 43:9 net [1] 10:20 network [1] 7:2 neutral [2] 10:19,20 never [2] 25:22 27:4 new [8] 2:10 11:3,7 20:15 26:4 27:12 28:12 29:10 newer [1] 33:22 news [4] 8:18,19,20,20 next [3] 38:15 39:18,22 nighttime [1] 8:14 none [3] 5:5,8,9 nor [3] 14:11 43:10,12 normal [1] 28:9 north [10] 1:7 4:12 5:11,22 9:4 10:14 16:21,24 17:5,7 northeast [6] 2:15,20 6:9 25: 23,24 26:1</p>	<p>northern [1] 4:16 note [2] 5:16 15:4 notice [1] 4:13 notices [1] 6:21 notification [1] 40:20 notified [1] 36:18 november [2] 4:9 5:19 number [9] 13:13,21,22,23 15:16,17 16:23 17:10 28: 18 numbers [2] 15:19 16:24 numerical [1] 29:2 ny [1] 2:10</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>obviously [2] 11:20 19:22 occur [1] 39:15 occurred [1] 30:8 offer [1] 38:2 offering [1] 8:4 office [4] 4:8 43:3,7,18 officer [35] 1:10 4:2,5 6:13, 16 9:14,18 14:3,18 17:10, 21 18:22 20:23 21:16 23:6 25:1,12,15,18 26:8 29:8 33: 18 37:9,13,20 38:7,12 40:3, 8,21 41:3,14 42:2,8,13 officesolutionsplusllc.com [1] 43:23 officials [1] 5:6 okay [17] 10:23 14:6,17,19 15:23 16:4 17:6,9 22:16 23: 6,16 25:22 38:12 40:3,6 42: 1,2 old [3] 30:11 34:7,8 Older [4] 20:16 31:10 34:6,9 oldest [1] 17:2 one [17] 7:20 10:22 16:5,11 18:15 25:2 26:19 27:11,11 31:8,9 32:11,12,20 34:5,20 35:19 one-hour [1] 8:11 ones [7] 22:7 27:13 30:14 34:6,9,13,17 only [19] 6:2 16:5 22:7 30:1, 14 31:8 32:4,12,12 33:1 34:15 35:1,2,13,16,22 36:2, 3 open [2] 4:19 5:13 opening [1] 6:11 operations [2] 2:21 7:3 operators [1] 28:2 opportunity [1] 6:17 opposed [1] 28:9 option [3] 33:19,20 35:2 options [2] 7:8,16</p>	<p>order [5] 4:21 27:1 28:16 30: 8 37:23 organization [1] 24:4 originally [1] 26:11 other [10] 5:6,12 16:23 21: 13 23:21 28:2 31:9,15 35: 11 39:6 others [1] 16:3 otherwise [1] 43:12 out [22] 7:17 12:9,12 17:16, 19 18:7 19:15 20:7,12,22 22:11 23:7 26:6 27:4 31:23 33:6 36:6 37:21 38:19 40: 19 41:5 42:14 outcome [1] 43:13 outlet [1] 18:21 outreach [1] 30:7 outside [2] 7:22,24 over [7] 6:18 7:3,7,20 26:18 27:21 36:7 overstated [1] 14:21</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m [1] 1:15 p.o [1] 43:19 package [4] 7:23 18:7 33:9, 9 packages [1] 33:7 page [1] 3:16 part [16] 19:11,19 21:11,16 22:2,14 23:8,9,11 24:9 26: 1,15 36:19 38:10 40:11,19 particular [1] 13:14 parties [1] 43:11 past [6] 4:6 10:9 28:13 29: 16,17 36:7 patricia [2] 2:19 6:10 patterson [57] 2:19 6:10 10: 23 11:5,8,11,19 12:3,21,23 13:4,9 15:7,14 16:4,8,12,17 17:7,14,18 18:9,19 19:1,5, 11,14,21 20:9,20 21:18,21 22:5,13,20 23:3,23 24:19 25:4,14,16,20 26:10 29:21 32:21 33:5 34:8,11,15,19, 22 35:3,9,18,22 36:15 37:6 pay [3] 12:13 35:10 36:11 paying [2] 36:12 38:5 pay-per-view [2] 35:20,23 pc [1] 8:1 peg [14] 29:19 30:9,13,15,21 31:3,15,23 32:18 33:20,23 36:8,19 38:10 people [1] 22:4 per [3] 8:7,9 31:18 percentage [1] 22:4</p>	<p>perhaps [2] 13:3 29:5 period [5] 14:22 31:24 36:10 37:18 38:3 permitted [7] 9:7 15:2,18,20 16:3,23 37:1 personally [1] 10:21 petition [3] 1:5 4:10 5:16 phone [2] 8:12 43:21 physical [1] 20:6 pick [4] 22:1 24:11 26:2 31: 2 picked [1] 24:15 piece [1] 25:7 pittsfield [7] 1:7 4:12,15 5: 22 9:5 10:15 14:22 place [2] 27:5 29:3 platform [2] 8:2 30:1 please [8] 5:1 6:1,4 9:15 14: 14 23:20 33:11 41:23 plug [2] 30:10,11 plus [3] 11:3 43:3,18 pm [1] 42:16 point [9] 26:14 27:4,19 29:4 30:5 36:18 37:18 38:19 39: 13 policy [3] 30:20 40:12,16 poore [65] 2:13 6:8,17 10:1, 3,18 11:12,15,18 13:6,10, 17 14:17 15:10,23 16:19 17:3,6,9 18:4,13 19:3,10,13 20:7 21:9,14,19 23:1 29:17 30:4,16,22 31:12,20,22 32: 6,14,19 33:3,14,17,21 34:7 35:7,12,15 36:5,17,23 37:5, 12,15,22 38:9,18 40:6,18 41:1,4,7,10,13 42:3,7 portal [1] 7:19 portland [1] 2:17 possibility [1] 27:6 possible [1] 39:15 premise [3] 11:22 21:5,7 premiums [1] 31:7 prepared [2] 16:15 26:12 preparing [2] 15:22 24:4 prerogative [1] 11:21 present [2] 5:5,9 presentation [2] 11:9 12:16 presented [1] 27:16 president [4] 2:7,14 6:9 43: 23 pretty [3] 17:1 22:18 38:19 previous [1] 28:6 previously [3] 19:12 23:19 25:5 price [10] 9:1,4,5 18:7,11 19: 23 20:5,6 32:3 36:9</p>
--	---	---	---

Commonwealth of Massachusetts
Department of Telecommunications and Cable
D.T.C. 13-10 R

<p>primarily [1] 31:12 primary [1] 18:17 probably [5] 16:9,10 35:19 36:14,15 proceeding [1] 4:13 proceedings [5] 4:1,20 9:11 43:5,14 process [3] 30:23 36:6 37: 22 produced [1] 43:15 program [3] 21:22,23 32:17 programmer [1] 12:12 programmers [1] 12:10 programming [9] 4:11 6:19 7:14 8:21 26:14,16,23 27:1, 7 programs [1] 7:20 projection [1] 14:22 promotional [1] 38:1 properties [1] 29:16 proposed [2] 37:4 38:13 provide [9] 7:16 13:21 15: 21 28:4,7 33:11 40:12,15, 16 provided [1] 6:21 provides [1] 7:10 providing [1] 8:19 public [8] 1:9 3:2,3 4:4 5:8, 10,13 6:21 public-access [1] 30:6 published [1] 4:14 push [1] 36:14 put [2] 20:20 37:7</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quam [3] 31:2 33:22 34:2 question [5] 10:13 21:10 22: 16 23:14 41:17 questionable [1] 39:3 questions [3] 6:15 9:12 21: 13 quite [2] 28:3 39:3</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>rachel [1] 5:10 raise [1] 9:15 rate [35] 3:6 9:7,8 10:4,5,11, 15,17 11:1,3,7,13,17,23 12: 5,16,19,22 13:19 18:1,20 19:24 27:23 33:11,12 36: 17 37:1,2,7,7,7 38:16 40:20 42:4,5 rates [3] 4:11 6:20 26:24 rather [3] 13:23 21:15 42:4 really [4] 9:3 12:12 21:23 28: 22</p>	<p>reason [2] 12:8 37:13 reasoning [3] 22:11 23:7,10 recall [1] 27:9 receive [6] 30:12 31:9,15 33: 23 34:3 36:19 received [5] 5:10,17 6:22 36: 19 37:15 recent [4] 16:11 33:11,12 38: 10 record [41] 3:2,3,7,8,9,10,11, 12,13,14,15 5:1,11 6:5 9:16 13:20 14:3,14,19 15:20 17: 21 20:23 21:1,17 23:8 29:8 33:10 40:5,9,10,12 41:14, 16,16 42:3,5,6,9,15,16 43:5 recorded [2] 5:3 43:14 recording [1] 43:14 records [1] 14:11 reference [1] 28:15 refile [2] 41:17,24 refiled [1] 14:18 refrain [1] 5:2 regulated [5] 9:2 16:2 19:23, 24 41:24 regulation [3] 14:9,10 23:11 regulations [1] 14:12 regulatory [2] 12:20 38:24 related [4] 23:18 28:11 39: 11 43:10 relations [2] 2:14 6:8 relationships [1] 13:14 remains [1] 9:7 remind [1] 4:20 remove [3] 14:15 27:1 41:23 removes [1] 28:7 reporter [1] 4:21 reports [1] 8:20 representatives [1] 5:6 request [32] 3:7,8,9,10,11, 12,13,14,15 13:20 14:4,7, 14,19,21 15:20 17:7,22 20: 23 21:1,17 23:8,16 29:9 33: 10 40:10,12 41:15,16 42:3, 5,9 requests [2] 5:24 40:10 required [1] 39:9 respect [1] 40:13 respectfully [1] 5:22 respond [3] 21:12 22:15 23: 5 response [6] 13:21 14:6,20 15:4 22:14 23:16 responses [2] 5:23 6:3 resulted [2] 9:4,5 retirement [1] 20:16 retransmission [4] 10:6,16</p>	<p>12:17 14:2 revenue [1] 20:21 review [2] 1:6 6:18 revisit [1] 14:14 road [1] 2:16 roku [1] 8:2 roll [1] 37:21 rolling [2] 36:6 37:22 room [2] 1:12 4:7 roughly [2] 15:4 22:3 round [1] 39:18</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>same [10] 8:11 12:6,7,18 14: 24 15:5 32:3,14 35:10 39: 22 samsung [1] 8:3 saw [1] 10:7 saying [3] 11:6 25:20 27:20 says [2] 33:1,8 scenario [1] 32:2 scenes [1] 32:23 schedules [1] 28:18 script [1] 40:15 seamless [1] 7:21 sean [3] 1:10 2:3 4:5 searching [2] 7:13,16 second [5] 8:8,9 19:6 39:6, 10 secondary [1] 32:8 see [4] 15:10 16:5 20:17 28: 8 seem [1] 27:5 seems [1] 28:3 seen [1] 15:8 send [2] 24:2 40:19 sense [3] 10:20 17:4 38:2 sent [2] 31:23 41:5 separate [3] 13:20 20:5,6 separately [2] 11:12 18:7 separating [2] 20:1 22:11 service [15] 4:10 6:19 8:10, 11 9:2 23:17,22 26:16 27: 23 28:15,17 29:23 33:1 35: 23 40:22 services [4] 7:2 8:4 31:6 33: 6 set [5] 19:23 31:1 33:22 34: 2 42:8 shall [3] 24:6,15 33:7 show [1] 12:13 showing [3] 10:12 12:16 36: 4 shown [1] 13:20 signal [1] 17:15 signals [8] 13:16 15:2,17,20</p>	<p>16:3,15,23 17:11 significant [2] 30:7 38:4 significantly [1] 31:17 similar [2] 28:2 38:1 simple [1] 31:16 simplifying [1] 7:12 simply [1] 10:13 since [3] 19:15,18 41:24 size [1] 28:2 smart [1] 8:3 software [2] 21:23 22:22 solutions [2] 43:3,18 soon [1] 38:23 sorry [2] 21:10 31:20 sort [1] 39:10 sound [1] 43:14 southern [1] 4:17 speaking [1] 5:2 specific [7] 13:14,23,23 23: 3 28:8,14 33:16 specifically [3] 14:5 16:21 38:15 speed [2] 8:7,8 speeds [1] 8:6 spoken [1] 5:2 staggered [2] 37:19,20 stand [1] 29:4 standard [6] 8:8 12:5 33:24 34:6,11,22 start [5] 9:21 23:21 28:4 36: 20 38:4 started [2] 20:1 42:3 starting [2] 38:7 40:10 state [3] 5:4,7 26:17 statement [1] 6:11 stations [1] 12:14 stays [1] 32:11 step [1] 39:10 still [12] 12:13 14:8 26:15,23 27:6 30:10,11,11,12,19 34: 18 39:14 stockbridge [1] 9:6 street [2] 1:13 4:8 structures [1] 27:10 subject [6] 14:8,10,12 23:11, 11 41:20 submitted [1] 3:3 subscriber [7] 32:4,5,11,18 34:5 35:1,11 subscribers [8] 13:15 14:16 29:24 30:2 31:10 32:12 35: 16 37:10 subsidiary [4] 39:17,17,23, 23 summer [4] 29:18 30:8 31: 22 36:8</p>
---	---	---	---

Commonwealth of Massachusetts
 Department of Telecommunications and Cable
 D.T.C. 13-10 R

<p>support [2] 8:10,12 suppose [1] 12:19 supposed [2] 10:19 19:1 suspend [1] 40:4 switched [1] 12:24 sworn [3] 9:15,17 38:21 system [10] 10:6 14:22 15: 19 16:21,24 17:11,17,19 19: 17 32:23 systems [17] 1:7 4:12 5:22 7:7 9:5 10:14,15 14:23 15: 1 16:2,16,24 39:5,5,6,8,11</p>	<p>trish [2] 10:21 21:19 true [2] 28:11 43:4 tuner [3] 31:2 33:22 34:2 turned [2] 14:1 27:21 tv [15] 7:22 8:2,3,23 10:9 30: 10,11,12 31:1,7,13 32:8 33: 22,22 34:2 tvs [1] 31:11 twc [2] 7:22 8:2 two [9] 13:15 16:6,9 20:2 25: 3,9,24 29:19 31:8 two-way [1] 31:14 type [3] 13:22 26:24 27:17 typically [1] 13:3</p>	<p>warner [39] 1:5 2:5 3:4,5,6 4: 9 6:4,7,9,19 7:1,4 8:18 9: 10,21 13:21 14:4,7,13,21 15:21 19:8 20:5 21:5 23:10, 17,21 25:12,17 27:9 28:4 29:14 39:5,6,9,17 40:1 41: 22 42:10 warner's [8] 5:19,20,23 18:3 22:11 26:16 31:5 40:12 washington [2] 1:13 4:8 wasn't [1] 22:14 watch [1] 7:23 way [5] 8:16 9:12 10:8 13:15 15:16 weather [1] 8:20 wednesday [1] 42:9 weekend [1] 8:14 welcome [1] 4:3 weren't [1] 29:10 weston [1] 43:20 whatever [4] 26:15 31:15 40: 14,16 whether [7] 16:1 39:2,16,22 40:15 41:20,22 whole [1] 24:14 will [45] 5:3,12 6:3,4 8:17 9: 14 14:3,19 16:17 17:7,13, 14,16,19,20 19:5,6,7 20:21 21:12,16 22:15 23:5,7 28:4 34:2 35:20 36:10,13,14,15, 20,22 38:7 39:2,14,19,21 40:4,4,12 41:11 42:5,8,14 williamstown [7] 14:8,11,15 41:16,20,21,24 williamstown's [1] 41:22 windows [1] 8:12 wish [3] 5:5,7,8 within [3] 12:17,18 13:19 without [5] 22:19 26:24 29: 11 30:2 34:3 witnesses [2] 9:15,17 wondering [1] 38:14 words [1] 5:2 work [2] 6:2 15:12 works [1] 15:16 wouldn't [3] 22:7 25:1 27:3 www.officesolutionsplusllc .com [1] 43:27</p>	<p>39:2,15 year's [6] 11:13 25:10 26:16 28:5 29:9 38:16 years [8] 10:9 14:22 19:16 25:9,24 29:20,21 36:7 york [3] 2:10 26:4 27:12 you've [1] 22:17 yourself [1] 6:4 yup [1] 16:12</p>
<p style="text-align: center;">T</p>	<p style="text-align: center;">U</p>	<p style="text-align: center;">X</p>	<p style="text-align: center;">Y</p>
<p>tablet [1] 7:23 tammy [4] 43:2,6,9,17 technical [3] 2:21 7:4 8:9 technician [1] 8:16 technology [1] 8:5 telecommunications [4] 1:2, 11 4:3 43:25 television [4] 4:15,16,17 30: 3 tells [1] 40:14 testify [3] 5:5,7,9 text [1] 8:15 thanks [1] 17:9 that's [3] 15:6 18:4 20:23 theme-based [1] 7:10 themselves [1] 20:14 third [1] 19:7 though [1] 10:16 thousand [1] 7:20 three [5] 14:23 16:2,10 29: 20,21 thursday [2] 1:15 4:6 tice [1] 43:23 tice// [1] 43:22 tier [9] 6:19 11:2 14:12 29: 23,24 30:1,5,16 31:3 today [8] 4:18 6:8,18 7:7 30: 10,13 36:12 38:6 today's [2] 4:13,20 together [2] 7:12 24:12 took [2] 27:5 29:3 top [2] 10:15 11:2 totally [1] 22:23 tough [1] 20:14 towards [2] 31:10,13 transaction [1] 39:11 transcript [3] 43:4,8,15 transcriptionist [2] 43:2,17 transfer [2] 39:7,8 transitioning [2] 30:23,24 transporter [1] 29:15 trial [1] 43:7</p>	<p>ultimate [2] 39:23,23 unbundled [4] 21:2 26:12, 15,22 unbundling [4] 20:18 21:4 26:13 27:5 uncertain [2] 39:18 40:1 under [5] 9:12 21:5 23:10 37:16 42:14 understand [6] 12:10,15 18: 6,13 35:21 36:24 understanding [5] 10:18,24 12:23 15:15 18:19 20:9 understood [1] 23:13 universal [2] 13:13,22 up [16] 9:20 12:4 14:4 19:17 23:1 24:11,15 26:2 27:17 28:1 31:2 32:1,20 35:18 36: 14 40:5 upgrades [1] 8:1 usa [1] 32:11 us-based [1] 8:12 useless [1] 22:19 uses [2] 22:1,6 using [1] 13:23</p>	<p style="text-align: center;">V</p> <p>varies [1] 4:17 versus [3] 24:10 26:9 31:18 via [1] 10:5 vice [3] 2:7,14 6:8 video [1] 35:7 vlew [1] 30:9 voice [1] 5:1</p>	<p style="text-align: center;">W</p> <p>wall [1] 30:12 wanted [2] 16:21 40:9 warehouse [6] 24:8 25:6,14 26:2,2,7 warehouses [9] 24:19,20,23 25:2,8,9,11,22 29:7</p>
<p style="text-align: center;">V</p>	<p style="text-align: center;">W</p>	<p style="text-align: center;">X</p>	<p style="text-align: center;">Y</p>
<p>various [1] 4:17 versus [3] 24:10 26:9 31:18 via [1] 10:5 vice [3] 2:7,14 6:8 video [1] 35:7 vlew [1] 30:9 voice [1] 5:1</p>	<p>wall [1] 30:12 wanted [2] 16:21 40:9 warehouse [6] 24:8 25:6,14 26:2,2,7 warehouses [9] 24:19,20,23 25:2,8,9,11,22 29:7</p>	<p>xbox [1] 8:3</p>	<p>year [18] 7:3,10 8:22 12:1,24 18:8 19:10 20:8,10 24:3 26: 20 28:7 29:10,11,15 31:24</p>