

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Time Warner Cable Inc.

Appeal of Local Rate Order

File No. \_\_\_\_\_

**ASSENTED-TO SURREPLY OF  
THE MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO TIME WARNER CABLE INC.'S REPLY**

Commonwealth of Massachusetts  
Department of Telecommunications and Cable

KAREN CHARLES PETERSON,  
COMMISSIONER

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(617) 305-3580

Dated: January 29, 2015

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The Massachusetts Department of Telecommunications and Cable (“MDTC”) submits this brief Assented-To Surreply<sup>1</sup> to correct Time Warner Cable Inc.’s (“Time Warner” or “Company”) confusion as to well-established Federal Communications Commission (“FCC”) precedent. On January 23, 2015, Time Warner filed its reply (“Reply”) to the Opposition of the MDTC in the above-captioned proceeding. In its Reply, Time Warner acknowledges for the first time the standard of review that applies to its Appeal, but then rehashes the conclusory arguments in its Appeal that lack legal support and are accompanied by irrelevant new facts. Time Warner’s Reply should be disregarded and, for the reasons stated in the Opposition, its Appeal should be denied.

In its Reply, Time Warner continues to base its argument on its notion that the FCC’s rules should not apply to it.<sup>2</sup> In particular, Time Warner faults the MDTC for quoting the FCC in

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<sup>1</sup> Time Warner assented to the MDTC’s filing of this Surreply in a January 16, 2015, telephone call between John Fogarty, Vice President & Assistant Chief Counsel of Time Warner, and Kalun Lee, Acting General Counsel of the MDTC. Time Warner confirmed its assent in a January 23, 2015, email to the undersigned.

<sup>2</sup> See Reply at 2-4.

*In re TCI Cablevision of Oregon, Inc* (“*Cablevision of Oregon*”) because that Order was subsequently vacated by settlement.<sup>3</sup> Time Warner fails to add, however, that the FCC itself quoted extensively from the exact same paragraph of *Cablevision of Oregon* and “reaffirm[ed] that decision’s analysis” in 2005.<sup>4</sup> To be clear, the FCC’s 1999 Order in *Cablevision of Oregon* was vacated on joint motions of the parties because the parties reached a settlement and, according to the FCC, the settlement rendered the Order in that case moot.<sup>5</sup> It remains the case, however, that “Merely arguing that a company has changed its accounting methods or cost classification policy does not meet the operator’s burden or establish that the methodology produced reasonable results.”<sup>6</sup> Moreover, as the MDTC noted in its Local Rate Order and in its Opposition, there are myriad other FCC decisions that stand for the same proposition, namely that a cable operator must demonstrate that its averaging methodology produces reasonable rates, and cannot evade regulation by providing incomplete information as Time Warner did in D.T.C. Docket 13-10.<sup>7</sup>

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<sup>3</sup> *Id.* at 2-3; *In re TCI Cablevision of Or.*, 14 FCC Rcd 17685, *Memorandum Opinion & Order* (CSB 1999), *vacated by settlement*, 16 FCC Rcd 13285, *Order* (CSB 2001).

<sup>4</sup> *In re Comcast of Dallas, L.P.*, 20 FCC Rcd 5892, 5896-97, *Order* (MB 2005); *see also id.* at 5895-96 (relying on additional paragraphs of *Cablevision of Oregon*).

<sup>5</sup> *In re TCI Cablevision of Or.*, 16 FCC Rcd 13285, 13285, *Order* (CSB 2001).

<sup>6</sup> *Cablevision of Oregon*, 14 FCC Rcd at 17688. *Comcast of Dallas* is not the only case in which the FCC subsequently relied upon *Cablevision of Oregon*. *See In re Charter Commc’ns Entm’t I, LLC, St. Louis, Mo.*, 20 FCC Rcd 3503, 3506 n.16, *Order* (MB 2005).

<sup>7</sup> *See, e.g., Comcast of Dallas*, 20 FCC Rcd at 5896-97; *In re Jones Commc’ns of Ga./S.C., Inc.*, 19 FCC Rcd 14814, 14816-17, *Memorandum Opinion & Order* (MB 2004) (holding that even *bona fide* costs must be justified by the cable operator to be recoverable); *In re TCI Cablevision of St. Louis, Inc.*, 12 FCC Rcd 15287, 15296-97, *Memorandum Opinion & Order* (CSB 1997) (reaffirming that a cable operator may not spontaneously identify costs that were not unbundled and include them in its equipment basket without making the proper adjustments to its programming rates); *In re TCI Cablevision of Nev., Inc.*, 14 FCC Rcd 14378, 14385, *Consolidated Order* (CSB 1996) (“A result of changes in [a cable operator’s] policy for cost classification, however, is not a sufficient justification to include the costs on Form 1205.”); *see also* 47 C.F.R. § 76.939.

Moreover, as the MDTC stated in its Opposition, Time Warner's plea for a policy change should come in the form of a separate Petition for Rulemaking.<sup>8</sup> The sole question before the FCC in this case is whether the MDTC had a reasonable basis to conclude that Time Warner failed to show that there was no double recovery.<sup>9</sup> Time Warner does not (and cannot) explain how FCC precedent is not a reasonable basis for the MDTC's conclusions. Given this, along with the detailed explanations for the MDTC's conclusions provided in both the Local Rate Order and its Opposition, the FCC should deny Time Warner's Appeal.

Respectfully submitted,

KAREN CHARLES PETERSON,  
COMMISSIONER

By:



Sean M. Carroll, Hearing Officer

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1000 Washington Street, Suite 820  
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January 29, 2015

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<sup>8</sup> Opposition at 5.

<sup>9</sup> *See In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5731, *Report & Order & Further Notice of Proposed Rulemaking* (1993); *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation Buy Through Prohibition*, 9 FCC Rcd 4316, 4346, *Third Order on Reconsideration* (1994).

**CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)**

I have read the foregoing Assented-To Surreply, and, to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and it is not interposed for any improper purpose.

Respectfully submitted,



Sean M. Carroll

Commonwealth of Massachusetts  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 820  
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(617) 305-3580

January 29, 2015

## CERTIFICATE OF SERVICE

I, Sara Clark, do hereby certify on this 29th day of January, 2015, that a true and correct copy of the foregoing Assented-To Surreply has been sent via U.S. mail, postage prepaid, to the following:

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