



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

ORDER REJECTING REFUND PLAN

CTV 03-4

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240 and 1205 filed by Time Warner Cable, Inc.

APPEARANCES:

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FOR: TIME WARNER CABLE, INC.
Petitioner

On July 19, 2005, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy ordered Time Warner Cable, Inc. (“Time Warner” or “the Company”) to file, by July 29, 2005, a revised and updated plan by which Time Warner will implement refunds to subscribers in Dalton, Pittsfield and Richmond (“Pittsfield System”). The Company’s refund liability results from its failure to properly justify certain programming costs associated with its carriage of a local news channel. Time Warner Cable Entertainment - Advance/Newhouse Partnership d/b/a/ Time Warner Cable, DA 05-2030 (July 15, 2005), affirming Time Warner Cable, Inc., CTV 03-4 (2004). Time Warner made a timely submission (“Refund Plan”).

By its refund plan, the Company proposes to return amounts it overcharged over a 12-month period beginning in January, 2006 (Refund Plan at 3). By this calculation, the Company’s refund liability amounts to \$749,493, or \$39.27 per subscriber based on the average number of 2004 basic service tier (“BST”) subscribers (*id.*). In support, the Company notes that in a proceeding currently pending before the Cable Division (CTV 04-5), the Company expects to present evidence to justify the costs of the programming at issue and claimed on its 2005 Federal Communications Commission (“FCC”) Form 1240 (*id.* at 1). The Company also notes that the current proceeding “includes both forward looking (‘projected’) and backwards looking (‘true-up’) calculations” (*id.*). The Company argues that since the true-up period reflected on the 2005 FCC Form 1240 covers most of the months of 2004, and some of 2003, “it will be more efficient and less confusing for consumers if the total amount of any refund due to them for the relevant period is calculated only once” (*id.*).

The Company suggests that the results of the 2005 rate proceeding will have retroactive applicability to the 2004 rate. The Company is mistaken. While the 2005 rate proceeding will include a “backwards-looking” calculation for the true-up component, the true-up calculation will not include any costs of Capital News 9 programming rejected by the Cable Division and the FCC. The true-up function does not provide an operator with the opportunity to reintroduce costs disqualified in previous proceedings. Any true-up adjustment resulting from other factors, such as the inflation adjustment, will be treated as either a positive or negative true-up adjustment on the form. The amount of the overcharge due to the inclusion of the rejected programming costs is certain and implementation of the refund need not be delayed.

In further support of its proposed refund plan, the Company references the Cable Division’s 2003 rate order wherein the Cable Division stated its expectation that some portion of the programming costs would be recoverable (*id.* at 1, see Time Warner Entertainment - Advance/Newhouse Partnership d/b/a Time Warner Cable, CTV 02-16 (2003)). There is no question that changes in programming costs are recoverable under the FCC’s benchmark rate methodology. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993). Existence of costs, however, is not determinative; operators must establish the reasonableness of the costs in

accordance with the FCC regulations. *Id.* at 5716, ¶ 128. As a result of its failure to properly justify the costs, Time Warner has lost the opportunity to recover them. The Company will have an opportunity to demonstrate the reasonableness of the costs associated with Capital News 9, and assuming it is able to do so, may include those costs only in the projected period calculation.

We delayed implementation of the refunds once because of the uncertainty given the FCC appeal. Time Warner Cable, Inc., CTV 03-4, “Order on Compliance Filing” (December 16, 2004). That uncertainty has been resolved. The public interest considerations now weigh in favor of immediate implementation of the refunds. While we are never able to ensure that the exact subscribers who were overcharged receive the refund, delaying implementation longer would make the link more tenuous. Further, the goal of administrative efficiency dictates that all calculations associated with the 2004 BST be resolved rather than extended over rate filings for the next two years. As we stated in approving Time Warner’s first request to delay implementing refunds, “in the next proceeding, the rates listed at FCC Form 1240, Worksheet 8, must reflect the refunds paid to subscribers. CTV 03-4, “Order on Compliance Filing” at 3. Finally, there is no claim of hardship by the Company.

Accordingly, we direct Time Warner to implement refunds immediately. For BST-only subscribers, Time Warner must make a one-time credit to appear on subscribers’ next monthly billing statement. For expanded tier customers, Time Warner may provide a one-time credit on the next monthly billing, or provide the refund over a 4-month period. In both cases, Time Warner must provide a billing insert explaining the refund to subscribers. Time Warner should submit a draft of the notice to the Cable Division for approval. Finally, Time Warner must submit a statement to the Cable Division notifying us of the total amount of the refund to be paid, and a subsequent statement verifying that the total amount was paid.

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

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

Issued: August 8, 2005