



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

D.T.C. 10-9

October 31, 2011

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

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**RATE ORDER**

**APPEARANCES:**

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*Petitioner*

## I. INTRODUCTION AND PROCEDURAL HISTORY

On November 2, 2010, Time Warner Cable (“Time Warner”) filed a consolidated Federal Communications Commission (“FCC”) Form 1205 with the Department of Telecommunications and Cable (“Department”) that proposed equipment and installation maximum permitted rates (“MPRs”) for all of its regulated Massachusetts communities. *Petition of Time Warner Cable for Review of FCC Form 1240 and Forms 1205 for the Great Barrington, North Adams and Pittsfield Systems*, Docket, 10-9 (2011) (“Docket”) at 1. Contemporaneously, Time Warner filed FCC Forms 1240 that proposed basic service tier (“BST”) MPRs for its nine regulated Massachusetts communities.<sup>1</sup> *Id.* Pursuant to FCC regulations, Time Warner’s proposed BST programming, equipment, and installation rates became effective on February 1, 2011. *See* 47 C.F.R. § 76.933(g). On July 28, 2011, the Department issued Time Warner an Order to publish the Notice of Public Hearing. Docket at 1. On August 15, 2011, the Department issued its First Set of Information Requests to Time Warner. *Id.* The Department held a public and evidentiary hearing at its Boston office on August 31, 2011. *Id.*

During the evidentiary hearing, the Department entered the following exhibits into the evidentiary record: Time Warner’s FCC Form 1240 for the Pittsfield system as Time Warner Exh. 1; Time Warner’s FCC Form 1240 for the North Adams system as Time Warner Exh. 2; Time Warner’s FCC Form 1240 for the Lee system as Time Warner Exh. 3; and Time Warner’s FCC Form 1205 as Time Warner Exh. 4. *Evidentiary Hearing of the Department of Telecommunications and Cable for Docket D.T.C. 10-9*, Transcript, (“Tr.”) at 5 (August 31,

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<sup>1</sup> The first FCC Form 1240 covered the historic Pittsfield system serving the towns of Dalton, Pittsfield, and Richmond. The other two FCC Forms 1240 covered the historic Great Barrington and North Adams systems previously acquired from Adelphia Communications Corporation and including the towns of Adams, Clarksburg, Lee, Lenox, North Adams, and Stockbridge. The town of Cheshire is no longer a regulated community as it is subject to effective competition. *See In the Matter of Time Warner Cable Inc., Petition for Determination of Effective Competition in Cheshire, MA*, CSR 7233-E, DA 11-270, Memorandum and Opinion Order, at 7 (rel. Feb. 15, 2011).

2011). The Department additionally admitted into evidence Time Warner's responses to the Department's First Set of Information Requests as DTC Exhibits 1 through 6. *Id.* During the evidentiary hearing, the Department issued eight Record Requests, the responses to which Time Warner filed on September 19, 2011. Docket at 1.<sup>2</sup> After thorough review and consideration, the Department approves Time Warner's adjusted FCC Forms 1240, and approves Time Warner's FCC Form 1205 as discussed below.

## II. ANALYSIS AND FINDINGS

### A. Review of the FCC Forms 1240

Time Warner proposes in its FCC Forms 1240 filings to increase the MPRs in all nine of its regulated Massachusetts communities. *See* Rate Schedule at Attachment 1. Time Warner additionally increased the operator selected rates in all of its regulated communities. *Id.* Despite the increase in rates, Time Warner's operator selected rates in all its regulated communities remain below its approved rates.<sup>3</sup> Tr. at 8. Therefore, the Department approves the FCC Form 1240 as filed for the Pittsfield system. As discussed below, the Department also approves Time Warner's revised FCC Forms 1240 as amended with updated projected period calculations for the Lee and North Adams systems.

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. *See* 47 C.F.R. §§ 76.922, 76.930. The FCC Form 1240 allows cable operators to update annually its BST 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 ("FRCs"). *See* 47 C.F.R. § 76.922(e).

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<sup>2</sup> Responses to Department Record Requests will be cited in this Order as "DTC RR – [request number]".

<sup>3</sup> The approved rate is comprised of Time Warner's MPR plus the Department approved system upgrade surcharge. *See* Attachment 1.

The standard under which the Department must review rate adjustments on the FCC Form 1240 is found in the FCC's rate regulations. *See* 47 C.F.R. § 76.922(a). Specifically, the FCC directed local rate regulators, such as the Department, to ensure that the approved rates are in compliance with the Communications Act of 1934, as amended ("the Communications Act"), and do not exceed the maximum permitted charges calculated by the FCC's rate forms. *Id.* The Department will accept, as in compliance with the statute, BST rates that do not exceed the approved maximum permitted charge as determined by federal regulations. *See* 47 C.F.R. §§ 76.922(a), 76.922(c). In addition, the Department shall only approve rates it deems reasonable. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15. The cable operator has the burden of proof to demonstrate that its proposed rates for BST programming comply with Section 623 of the Communications Act, and implementing regulations. *See* 47 U.S.C. § 543; *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking*, 8 F.C.C.R. 5631, at 5716, ¶ 128 (May 3, 1993) ("*FCC Rate Order*"); 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator).

As part of its typical review of FCC Forms 1240, the Department scrutinizes the data behind all projected period calculations. Module E of FCC Form 1240 contains the calculations for determining the amount of interest to which an operator is entitled for the projected period. Time Warner's current forms were filed with the Department on November 2, 2010. Docket at 1. In addition, Time Warner's previous projected period ended on January 31, 2011. *See* Time Warner Exh. 1, 2, 3. Therefore, the Department anticipated a three month period interval from November 2010 and January 2011 in Time Warner's interest calculations.

While the FCC Form 1240 for the Pittsfield system indicated a three month interval, the Forms 1240 for both the Lee and North Adams systems incorrectly used a ten month interval in their interest calculation. *See* Time Warner Exh. 2 and 3. At the evidentiary hearing, the Department issued a record request directing Time Warner to review the FCC Forms 1240 for these communities, and to file amended forms pending any necessary adjustments. Tr. at 9-10. In its response to the Department's record request, Time Warner agreed that the appropriate period interval for the interest calculation is indeed three months, and on September 19, 2011 the company subsequently submitted revised FCC Forms 1240 for the Lee and North Adams systems. *See* DTC RR – 1. While the amended forms yield slightly reduced MPR's for both systems, the adjustment did not affect the increased operator selected rates because Time Warner is charging below the MPR in both the Lee and North Adams systems. *See* Attachment 1. The Department therefore approves the FCC Form 1240 for the Pittsfield system as filed on November 2, 2010, and the FCC Forms 1240 for the Lee and North Adams systems as amended on September 19, 2011.

B. Review of the FCC Form 1205

In its FCC Form 1205 filing, Time Warner proposes to adjust its maximum permitted equipment and installation rates. As discussed below, Time Warner amended their FCC form 1205 to correct for an error in the calculation of the number of remote control units in service. The Department has analyzed Time Warner's proposed adjustments, and accepts Time Warner's FCC Form 1205 as amended on August 29, 2011 because it is consistent with FCC rate regulations.<sup>4</sup> Time Warner's approved BST MPRs and operator selected rates for equipment and installations appear in the Rate Schedule in Attachment 1.

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<sup>4</sup> 47 C.F.R. § 76.923(a)

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation*, at 1, 7, 11-13 (June 1996) (“*FCC Form 1205 Instructions*”). A cable operator prepares the FCC Form 1205 on an annual basis using information from the cable operator’s previous fiscal year. *Id.* at 2-3. In this proceeding, the Department reviews Time Warner’s nationwide FCC Form 1205 for the fiscal year ending September 30, 2010. *See* Time Warner Exh. 4 at 1.

Subscriber charges established by the FCC Form 1205 may not exceed charges based on actual costs in accordance with the FCC’s regulatory requirements. *See* 47 C.F.R. § 76.923(a)(2). The burden of proof is on the cable operator to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act and its implementing regulations. *See* 47 U.S.C. § 543; *FCC Rate Order* at 5716, ¶ 128; 47 C.F.R. § 76.937(a). Here, Time Warner has meet its burden of proof.

Time Warner submitted a national consolidated FCC Form 1205 covering all of its regulated communities in support of its proposed MPRs for installation and equipment. *See* Time Warner Exh. 4. Time Warner’s MPRs for digital converters, high definition television (“HDTV”) converters, and cable cards are decreasing, as are the actual rates charged to customers for such equipment. *See* Rate Schedule at Attachment 1. Meanwhile, the MPR and actual rate charged for remote controls has increased slightly from Time Warner’s previous FCC Form 1205 filing. *Id.* Time Warner’s FCC Form 1205 filing showed that over the past year a number of divisions were removed from their calculation as a result of becoming subject to effective competition. *Tr.* at 11-12. Time Warner asserts that because the divisions are no longer subject to regulation, their assets and costs are not included in the current FCC Form 1205

filing. *Id.* at 11-17. Time Warner testified that as a result of the removal their FCC Form 1205 contained a significant decrease in Schedule A assets and Schedule B operating costs. *Id.*

At the Department's request, Time Warner submitted a detailed description of its process for removal of effective competition communities from the FCC Form 1205.<sup>5</sup> *See* DTC RR – 2, 3, 4, Tr. at 11-17. After review, the Department finds Time Warner has successfully established its adjustments as being consistent with FCC requirements. *See* 47 C.F.R. § 76.923 (2)(c)(1)(stating the “[c]ost of customer equipment included in the Equipment Basket may be aggregated, on a franchise, system, regional, or company level, into broad categories.”)

The Department additionally asked Time Warner why the number of remote control units accounted for on Time Warner's FCC Form 1205 had not decreased nearly as much as the decrease in other equipment such as converter boxes. *See* DTC Exh. 6; Tr. at 18-19. Time Warner indicated to the Department that the discrepancy was due to a mechanical calculation error which caused an automated spreadsheet formula to pull data from an incorrect source. DTC RR – 6. Time Warner filed an amended FCC Form 1205 containing a revised remote control total more in-line with the anticipated decrease. *Id.* Because the changes in input for the remote control cost calculation were proportionally uniform, the resulting calculated unit rate per month remained unchanged. *Id.* After careful review, the Department finds that Time Warner's revised FCC Form 1205 is calculated in accordance with FCC rules, and therefore approves the amended form submitted on August 28, 2011. *See* 47 C.F.R. § 76.923(a)(2).

In sum, based on the Department's review of Time Warner's amended FCC Form 1205 and revised Forms 1240, as well as Time Warner's responses to inquiries, the Department

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<sup>5</sup> Time Warner explains “[w]hen all communities in a division are granted effective competition, then no information for that division is included on the Form 1205. However, if only certain communities of a division are granted effective competition then an allocation, based on basic cable subscribership, is used since the financials are not recorded at the community level...” DTC RR – 4.

determines that all of Time Warner's equipment and installation, and programming rate forms are in compliance with federal laws and regulations and are reasonable. 47 C.F.R. § 76.922(a). As such, the Department concludes that the BST MPRs established by Time Warner's revised Form 1205 and FCC Forms 1240 for the projected period from February 1, 2011 to January 31, 2012, are in compliance with applicable law. 47 C.F.R. § 76.922(a). Time Warner's proposed and approved BST programming and equipment MPRs and actual BST programming and equipment rates appear in the Rate Schedule below, at Attachment 1.

### III. ORDER

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

**ORDERED:** That Time Warner's FCC Form 1240 for the communities of Dalton, Pittsfield, and Richmond, as filed on November 2, 2010, are approved; and it is

**FURTHER ORDERED:** That Time Warner's FCC Forms 1240 for the communities of Adams, Clarksburg, Lee, Lenox, North Adams, and Stockbridge, as revised on September 19, 2011, are approved; and it is

**FURTHER ORDERED:** That Time Warner's FCC Form 1205, as revised on August 28, 2011, is approved.

By Order of the Department

/s/ *Geoffrey G. Why*\_\_\_\_\_  
Geoffrey G. Why, Commissioner



## RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.