



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

D.T.C. 12-10

November 25, 2013

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

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**RATE ORDER**

**APPEARANCES:**

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FOR: TIME WARNER CABLE  
*Petitioner*

## **I. INTRODUCTION**

In this Order the Department of Telecommunications and Cable (“Department”) approves the petition of Time Warner Cable (“Time Warner” or “Company”), in which Time Warner seeks to establish basic service tier (“BST”) maximum permitted rates (“MPR”), and equipment and installation rates for its Great Barrington, North Adams, and Pittsfield systems.

## **II. PROCEDURAL HISTORY**

On December 3, 2012, Time Warner filed Federal Communications Commission (“FCC”) Forms 1240 with the Department in which Time Warner proposed BST MPRs for the nine regulated communities in its Great Barrington, North Adams, and Pittsfield systems.<sup>1</sup> Time Warner also filed a nationwide FCC Form 1205 that proposed equipment and installation MPRs for all of its regulated Massachusetts communities. *Pet. of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, N. Adams, & Pittsfield Systems*, Docket 12-10 (2013) (“Docket”) at 1. Pursuant to FCC regulations, Time Warner’s proposed BST programming, equipment, and installation rates became effective on March 1, 2013. *See* 47 C.F.R. § 76.933(g).

On April 23, 2013, the Department issued a Notice of Public Hearing, Order of Notice, Procedural Schedule, and its First Set of Information Requests. Docket at 1. Time Warner filed responses to the Department’s First Set of Information Requests on May 13, 2013. *Id.* The Department held public and evidentiary hearings on May 22, 2013. *Id.* On June 17, 2013, Time Warner submitted its responses to the record requests (“Record Requests”) issued by the Department at the evidentiary hearing. *Id.* On October 8, 2013, Time Warner filed amended FCC Forms 1240 to address issues raised in the Record Requests.

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<sup>1</sup> Those communities are Adams, Clarksburg, Dalton, Lee, Lenox, North Adams, Pittsfield, Richmond, and Stockbridge.

The evidentiary record consists of four Time Warner exhibits, six responses to Department Information Requests, and eleven responses to four<sup>2</sup> Department Record Requests. After review and consideration, the Department approves Time Warner's FCC Forms 1240, as amended, and its FCC Form 1205, subject to the Department's findings below.

### **III. ANALYSIS AND FINDINGS**

#### **A. Time Warner's FCC Forms 1240**

The Department approves Time Warner's FCC Forms 1240 as revised on October 8, 2013. Time Warner's approved BST MPRs and operator selected BST programming rates appear in the Rate Schedule attached hereto at Attachment 1.

A cable operator must calculate its rates upon specific FCC-created forms incorporating the provisions of the FCC's rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. Pursuant to the Form 1240 regulations, the FCC allows a cable operator 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). To adjust the rates on the FCC Form 1240 for projections of external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that its projections are reasonably certain and reasonably quantifiable. *See* 47 C.F.R. §§ 76.922(e)(2)(ii)(A), 76.922(e)(2)(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. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRCs to the extent they are reasonably certain and reasonably quantifiable. *Id.* FRC projections, however, are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

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<sup>2</sup> The Record Requests were D.T.C. RR 1-A thru H, 2, 3, and 4.

The standard under which the Department reviews rate adjustments on the FCC Form 1240 is contained 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 ("Communications Act"), and do not exceed the maximum permitted charges calculated by the FCC's rate forms. *Id.* The Department may accept, as compliant 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 approve only those rates that 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 proving that its proposed BST programming rates 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 & Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Report & Order & Further Notice of Proposed Rulemaking*, 8 FCC Rcd. 5631, at 5716, ¶ 128 (rel. May 3, 1993) ("*FCC Rate Order*"); 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator).

In this Order, the Department addresses an issue with Time Warner's FCC Form 1240 for the Great Barrington system, and the true-up calculation on the FCC Forms 1240 for all of the Company's regulated communities. The Department accepts Time Warner's FCC Forms 1240, as amended on October 8, 2013.

*1. The Great Barrington System.*

The Department's review of Time Warner's initial FCC Form 1240 filing for the Great Barrington system revealed an error on the Worksheet 8 calculation of the amount charged during the true-up period. *See Petition of Time Warner Cable for Review of FCC Form 1240 &*

*Forms 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 12-10, Hearing Transcript (“Tr.”) at 21. It was determined that Time Warner’s initial FCC Form 1240 for the Great Barrington system included an increment of Abbreviated System Upgrade (“ASU”) charges in its reporting of the actual rate charged to its BST customers on Worksheet 8. As a result, Time Warner calculated a small negative amount in its FCC Form 1240 Module F True-Up Segment for period 1 calculation. *See* Exhibit 3. A cable operator, however, is only permitted to use its ASU increment to the extent that the MPR is insufficient to meet the cable operator’s selected rate. *In re Bresnan Commc’ns Co., Order on Reconsideration*, 14 FCC Rcd. 15230 ¶ 7 (rel. Sep. 7, 1999) (Affirming the requirement that an “operator fully use its benchmark rate prior to recovering the network upgrade add-on” and finding that a system upgrade “is only to be used if the benchmark rate alone is insufficient.”). Because ASU increments may only be used to the extent a cable operator selects a rate above the MPR, it precludes the possibility of true-up. The Department requested that Time Warner confirm its FCC Form 1240 Worksheet 8 calculations. *See* D.T.C. RR 3. On October 8, 2013, Time Warner submitted its response to the Department by revising its FCC Form 1240 for the Great Barrington system by including a corrected Worksheet 8, which addressed the concern the Department raised with respect to Time Warner’s original FCC Form 1240.

## *2. Calculation of True-Up.*

On October 8, 2013, Time Warner amended its FCC Forms 1240 filings for its Great Barrington, North Adams, and Pittsfield systems correcting the total number of months included in the true-up interest calculation. *See* Docket at 1. When calculating true-up interest, a cable operator must determine the number of months between the end of the true-up period and the end of the most recent projected period. *See* FCC Form 1240 Instructions for Module E. Time

Warner's initial FCC Forms 1240 indicate that the end of Time Warner's true-up period was September 30, 2012, and the end of its most recent projected period was January 31, 2013. *See* Tr. at 12. However, Time Warner had used the December 3, 2012 filing date to calculate its true-up period instead of the correct September 30 date. *See* Module E Line E3. At the evidentiary hearing, the Department asked Time Warner to review its FCC Forms 1240 to ensure the accurate calculation of the true-up period. *See* D.T.C. RR 1-A. On June 17, 2013, Time Warner filed revised FCC Forms 1240 using the correct September 30, 2012 true-up end date. However, Time Warner's new calculations used a March 1, 2013 projected period date instead of the correct January 31, 2013 date. *Id.* On October 8, 2013, Time Warner again re-submitted its FCC Forms 1240 for the Great Barrington, North Adams, and Pittsfield systems reflecting the correct four month period from September 30, 2012 to January 31, 2013. *See* Docket at 1. The revised filing reflected a decrease of true-up interest, and therefore a decrease in the MPR for the North Adams and Pittsfield systems. *Id.* Because the operator selected rate remains below the MPR in these systems, no further adjustments are necessary. There was no change in the MPR for the Great Barrington system however, because that system had no material true-up.

The Department approves Time Warner's amended FCC Forms 1240 as filed on October 8, 2013, for the Great Barrington, North Adams, and Pittsfield systems. The Department finds that Time Warner's FCC Forms 1240 are reasonable and are prepared in accordance with FCC regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15.

B. Time Warner's FCC Form 1205

In its FCC Form 1205, Time Warner proposed adjusting its maximum permitted equipment and installation rates consistent with FCC rate regulations. The Department has analyzed Time Warner's proposed adjustments, and approves its FCC Form 1205 as filed. Time

Warner's approved BST MPRs and operator selected rates for equipment and installations are in the Rate Schedule attached hereto at Attachment 1.

FCC Form 1205 establishes rates for installations and equipment like 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 its FCC Form 1205 on an annual basis using information from its previous fiscal year. *Id.* at 2-3. In this proceeding, Time Warner's FCC Form 1205 is for the fiscal year ending September 30, 2012. *See* Exhibit 4 at 1.

In accordance with the FCC's regulatory requirements, subscriber charges established by FCC Form 1205 may not exceed charges based on actual costs. *See* 47 C.F.R. § 76.923(a)(2). The cable operator has the burden 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).

Time Warner submitted a national consolidated FCC Form 1205 covering all of its regulated communities, including those in Massachusetts, in support of its proposed MPRs for installation and equipment. *See* Exhibit 4. In Time Warner's past rate proceedings, the Department has inquired into the impact of removing communities subject to effective competition from the national FCC Form 1205. *See Petition of Time Warner Cable for Review of FCC Form 1240 & Forms 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 10-9, at 6 (Oct. 31, 2011); *Petition of Time Warner Cable for Review of FCC Form 1240 & Forms 1205 for the Great Barrington, N. Adams & Pittsfield Sys.*, D.T.C. 11-15, at 6 (Oct. 31, 2012). Time Warner's current FCC Form 1205 reveals that additional communities have been removed from this filing as a result of effective competition. *See* Exhibit 4. While removal of

such communities from FCC Form 1205 calculations is generally settled practice, the Department inquired into Time Warner's methodology for removing costs from systems where less than the total number of subscribers for a region were being removed. *See* Tr. at 26. Time Warner explained that its "costs are maintained at a regional level." *See* D.T.C. RR 4. Costs then "are allocated based on a percentage of regulated vs. unregulated subscribers." *Id.* "The regulated costs from the various regions are then accumulated to prepare the National 1205 filing." *Id.* Because Time Warner maintains its costs at a regional level, allocating the removal of costs from effective competition communities by the percentage of subscribers in those communities results in a more accurate calculation of regulated costs. *See* FCC Form 1205 Instructions at 2 (permitting the data for customer equipment, installation, and repair to be identified on a franchise, system, regional, or company level).

The Department finds that Time Warner's removal of effective competition communities from its FCC Form 1205 filing is in accordance with FCC regulations, and that its proposed rates are reasonable. *See* Attachment 1.

#### IV. **ORDER**

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

**ORDERED:** That Time Warner's FCC Forms 1240 for Great Barrington, North Adams, and Pittsfield systems, as revised on October 8, 2013, are approved; and it is

**FURTHER ORDERED:** That Time Warner's FCC Form 1205, as submitted on December 3, 2012, is approved.

By Order of the Department

/s/ Geoffrey G. Why\_\_\_\_\_  
Geoffrey G. Why  
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.