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BUSINESS REGULATION

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,

/s/ Sean M. Carroll

Sean M. Carroll  
Hearing Officer

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