



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

ORDER ON COMPLIANCE FILING

CTV 04-5 (Phase II)

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.

APPEARANCE:

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Time Warner Cable
290 Harbor Drive
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FOR: TIME WARNER CABLE, INC.
Petitioner

On November 30, 2005, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy issued a rate order concerning Time Warner Cable, Inc.’s (“Time Warner” or “the Company”) proposed Federal Communications Commission (“FCC”) Form 1240 for the communities of Dalton, Pittsfield and Richmond (the “Pittsfield System”). Time Warner Cable, Inc., CTV 04-5 (Phase II) (2005). At issue in the proceeding was the appropriate amount of Capital News 9 programming costs to be included in the calculation of the basic service tier maximum permitted rate (“BST MPR”). Id. at 1-2. The Cable Division determined that the amount of programming costs Time Warner had proposed on its FCC Form 1240 was not reasonable, and established an amount based on the prevailing market price for the regional networks offered on the Pittsfield system. Id. at 19, 20-21.

The Cable Division directed the Company to recalculate the BST MPR using the approved programming cost amount and submit the revised FCC Form 1240 for our review. Id. at 22-23. Since the amount of recoverable Capital News 9 programming costs has been at issue in the preceding Time Warner rate matters, the Cable Division sought to capture all related rate adjustments previously required as well. Id. We directed the Company to submit a plan by which it would make subscribers whole for overpayments during the 24-month period between January 2004 and December 2005. Id.

On December 14, 2005, Time Warner submitted a revised FCC Form 1240 for the calendar year 2005 projected period and a proposed refund plan (“Compliance Filing”). The Company’s proposal included both a reduction in the BST rate and a credit for subscribers.

Specifically, for overcharges related to the 2005 FCC Form 1240, the Company proposed to credit all subscribers \$17.69, to be reflected on one monthly bill, commencing with billing cycles in January 2006 (*id.*). The Company calculated the credit amount by first revising its starting rate on Line A1, from \$10.59 to \$6.68, to remove overcharges that occurred during the 2002-2003 true-up period (*id.* at FCC Form 1240, at 2).¹ Using the revised 2004 BST MPR, and the approved programming costs for Capital News 9, Time Warner adjusted the true-up period costs for the 2003-2004 true-up period on the 2005 FCC Form 1240 and calculated a revised 2005 BST MPR of \$7.11 (Compliance Filing at 1, and at FCC Form 1240, at 3). The Company then subtracted \$7.11 from its actual rate charged of \$8.56, to arrive at a monthly refund amount of \$1.45 (Compliance Filing at Refund Plan).² This refund amount, over 12 months and with accrued interest, totals \$17.69 per subscriber (*id.*). The Cable Division determines that the Company appropriately calculated the amount of the credit it must provide subscribers for overcharges related to the 2005 FCC Form 1240.

For overcharges that occurred from October 2004 through December 2004,³ Time Warner proposed to include those amounts in the true-up calculation on a revised

¹ This rate, \$6.68, was the rate the Cable Division approved in Time Warner Cable, Inc., CTV 03-4, “Order on Compliance Filing” (2004). See also CTV 04-5 (Phase II), at 22.

² Time Warner’s total BST rate in the Pittsfield System during 2005 was \$9.10, but this included an FCC Form 1235 upgrade surcharge of \$0.54 that was not subject to refund (Compliance Filing at Refund Plan).

³ Because the rate form is typically submitted during the previous projected period, the last three months of the projected period for which actual data is not available, are included in the true-up period of subsequent rate form.

2006 FCC Form 1240,⁴ thus serving to offset its 2006 rates by any overcharges for these last three months of 2004 (Compliance Filing at 1). As we alluded in our order, the FCC allows cable operators latitude with respect to their true-up calculations. See CTV 04-5 (Phase II) at 10. The Company's proposal to adjust its 2006 FCC Form to reflect overcharges in 2004 appears to be within the bounds of this latitude. More importantly, we determine that the Company's proposal benefits subscribers. Including the overcharges for these months as a negative true-up adjustment on the Company's 2006 FCC Form 1240 will result in a lower BST MPR in 2006. Because the negative true-up will reduce the BST MPR calculated by the 2006 FCC Form 1240, the cumulative benefit that subscribers will receive from lower monthly rates during 2006 will exceed the amount that subscribers would have received had the overcharge been refunded.

The Cable Division concludes that Time Warner's proposed FCC Form 1240 adjustments and refund plan adequately reimburses Pittsfield System subscribers for overpayments from January 2004 through December 2005. The Cable Division further concludes that the Company's revised 2005 FCC Form 1240 correctly incorporates the approved pass through amount for Capital News 9, in compliance with the Order. As an initial step in our investigation of CTV 05-4, the Company will be required to submit the 2006 FCC Form 1240 in compliance with this Order.

⁴ The Company filed, for review and approval, its 2006 FCC Form 1240 with the Cable Division on September 30, 2005. The matter is docketed as CTV 05-4, and is pending.

After review and consideration, the Cable Division hereby accepts, as reasonable, Time Warner's amended FCC Form 1240 for the 2005 projected period, as submitted on December 14, 2005, for Dalton, Pittsfield and Richmond.

Further, after review and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable law, Time Warner's refund plan, as submitted on December 14, 2005, for Dalton, Pittsfield and Richmond. The Cable Division directs Time Warner to file, within 30 days of the payment of its refunds, a report that describes: (1) the amount of the refund credited to each subscriber's bill, (2) the total amount of the refunds paid, and (3) the date the refunds were paid.

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

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

Issued: January 13, 2006