THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY
Cable Television Division

RATE ORDER

CTV 05-4

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.

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FOR: TIME WARNER CABLE
Petitioner

I. INTRODUCTION

On September 30, 2005, Time Warner Cable ("Time Warner" or "the Company") filed with the Cable Television Division ("Cable Division") of the Department of Telecommunications and Energy proposed basic service tier ("BST") programming rates on Federal Communications Commission ("FCC") Forms 1240. The Company filed two FCC Forms 1240: one for Athol and Orange (the "Athol System"), and the other for Dalton, Pittsfield and Richmond (the "Pittsfield System"). In conjunction with its FCC Form 1240 filings, Time Warner also filed a nationwide FCC Form 1205 with proposed equipment and installation rates based on a fiscal year ending September 30, 2005. Pursuant to the FCC's rate regulations, Time Warner implemented changes to its BST equipment rates on January 1, 2006. See 47 C.F.R. § 76.933(g). While Time Warner's proposed maximum permitted rates ("MPR") for programming became effective on January 1, 2006, Time Warner did not change the programming rates charged to subscribers.

The Cable Division held a public and evidentiary hearing in Boston on May 25, 2006. No communities intervened in this proceeding. The evidentiary record consists of Time Warner's rate forms admitted as Time Warner Exhibits 1 through 3, Time Warner's responses to information requests admitted as Cable Division Exhibits 1 through 10, and Time Warner's responses to record requests issued by the Cable Division.

II. REVIEW OF FCC FORMS 1240

A. Standard of Review and Burden of Proof

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which a cable operator must calculate its rates. The FCC Form 1240 allows a cable operator to annually update its BST programming rates to account for inflation, changes in external costs, and changes in the number of regulated channels. In order that rates be adjusted on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. §§ 76.922(e)(2)(ii)(A) and 76.922(e)(2)(iii)(A). Cable operators may also project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable; however, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A).

The standard under which the Cable Division must review rate adjustments on the FCC Form 1240 is found in the FCC's rate regulations. Specifically, the rate regulator shall assure that the rates comply with the requirements of Section 623 of the Communications Act of 1934, as amended. 47 U.S.C. § 543; 47 C.F.R. §§ 76.922, 76.923, and 76.930. The Cable Division may accept as in compliance with the statute BST rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by federal regulations. See 47 C.F.R. § 76.922(a). In addition, the Cable Division shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 U.S.C. § 543; 47 C.F.R. §§ 76.937(d) and (e), and 76.942.

The burden of proof is on the cable operator to demonstrate that its proposed rates for BST programming comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 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, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, at 5716, ¶ 128 (1993) ("Rate Order"); see also 47 C.F.R. § 76.937(a).

B. Discussion and Analysis

1. The Pittsfield System

In the last several Time Warner rate proceedings, the Cable Division has focused on the issue of Time Warner's proposed recovery of programming costs associated with its carriage of Capital News 9, a 24-hour news and local programming channel owned by an affiliate of the Company. Time Warner Cable, Inc., CTV 04-5 (Phase II) (2005); Time Warner Cable, Inc., CTV 03-4 (2004); Time Warner Entertainment-Advance/Newhouse Partnership, CTV 02-16 (2003).[1] With respect to programming costs of an affiliate channel, a cable operator must establish that the proposed external cost recovery is based on the prevailing company price, if the affiliated programmer has sold a substantial number of like assets to non-affiliates; but if a prevailing company price is not available, the cost recovery for such programming shall be the

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1 For a more complete procedural history, see Time Warner Cable, Inc., CTV 04-5 (Phase II) at 1-4 (2005).

lower of their cost to the affiliated programmer less all applicable valuation reserves, or their fair market value. 47 C.F.R. § 76.924(i)(1); Time Warner Cable Entertainment - Advance/Newhouse Partnership d/b/a/ Time Warner Cable, DA 05-2030, at 5 (2005).

In the most recent Time Warner rate proceeding, the Cable Division approved a fair market value of $0.99 per subscriber per month for Capital News 9. CTV 04-5 (Phase II), at 18-21. Since the approved fair market value was less than the amount the Company had proposed, and the Company had not yet made any previously ordered refunds, we directed the Company to submit an FCC Form 1240 for the Pittsfield system that would resolve all pending refund issues. Id. Subsequently, we approved the Company's proposal to refund, as a one-time credit, a portion of the overcharges and to refund the remainder through adjustments to its 2006 FCC Form 1240, the form under review in this proceeding. Time Warner Cable, CTV 04-5 (Phase II), "Order on Compliance Filing" at 2-4 (January 13, 2006). The adjustments to the 2006 form would offset any overcharges paid by subscribers during the last three months of 2004; these months were not included on the 2005 FCC Form 1240, but are the first three months of the true-up period of the 2006 form (Exh. Time Warner-2, at 1; see CTV 04-5, Exh. Time Warner-2, at 1). We noted that this proposal benefitted subscribers, because the adjustments to the true-up period reflecting these overcharges would result in a lower BST maximum permitted rate ("MPR") on the 2006 form. CTV 04-5 (Phase II), "Order on Compliance Filing" at 3.

On the revised 2006 FCC Form 1240, Time Warner appropriately carried over the BST MPR approved in the previous proceeding (Exh. CTV-1, at 2 of 2006 Form); See also

Instructions for FCC Form 1240, at 12. Time Warner also appropriately reduced the projected period's true-up amount from a positive amount of $1.22 on the initial form to a negative amount of $0.77 on the revised form (Exh. Time Warner-2, at 3, Line I8; Exh. CTV-1, at 3 of 2006 Form, Line I8). The Company's BST MPR decreased from $11.03 on the original form to $8.60 on the revised form, a reduction of $2.43 (Exh. Time Warner-2, at 3, Line I9; Exh. CTV-1 (2006), at 3, Line I9). We conclude that Time Warner's revised 2006 FCC Form 1240 for the Pittsfield System appropriately reduces the BST MPR for Pittsfield subscribers, in compliance with our previous Orders.

In addition to the true-up reconciliation, the FCC Form 1240 also includes Time Warner's projected programming costs for which it seeks recovery. The Company proposed annual programming costs of $341,276.16 for the projected period (Exh. CTV-1, at 2006 Form, Worksheet 7 - External Costs, Projected Period, Line 701). Time Warner explained that the primary component of these proposed programming costs is the cost of Capital News 9 (Exh. CTV-4(a) (redacted copy)).[2] The Company proposed a fair market value of $0.99 per month per subscriber for Capital News 9, the same value that we approved in the previous rate proceeding(Exhs. CTV-4(a) and (b); CTV 04-5 (Phase II), at 18-21). There is nothing in the record that would suggest that the fair market value of Capital News 9 would have decreased from its prior value. We find that Time Warner's proposal to set a fair market value of $0.99 for

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2 The Cable Division granted Time Warner's request for confidential treatment for certain programming cost information contained in the Company's response (Tr. at 4-5).

Capital News 9 in the current proceeding is fair and reasonable and complies with all applicable law and precedent.

We find that Time Warner's revised 2006 FCC Form 1240 filing for the Pittsfield System raises no other issues. Accordingly, based on our review of the record, we hereby accept Time Warner's revised 2006 FCC Form 1240 for the Pittsfield System. We conclude that the 2006 FCC Form 1240 entered as Exh. CTV-1 establishes a BST MPR and true-up adjustments for Dalton, Pittsfield and Richmond that are just and reasonable and in compliance with applicable law and precedent.

2. The Athol System

On its FCC Form 1240 for the Athol System, Time Warner reported a decrease in the system's total subscribers during the true-up period, from 6,339 subscribers in October 2004, to 6,099 subscribers in September 2005, a decrease of 240 subscribers (Exh. Time Warner-1, at Per Subscriber Programming Costs attachment). However, the Company estimated its average subscribers during the projected period, commencing on January 1, 2006, to be 6,239 subscribers, an increase of 140 subscribers over the September 2005 total (id.). The Company explained that its projected period subscriber total was based on the average subscribers for the true-up period (Exh. CTV-2). The Company also stated that it has used this same methodology in its previous filings (id.).

The FCC Form 1240 Instructions state that there are a number of acceptable methods for estimating average subscribers for the projected period. Instructions for FCC Form 1240, at 12. The FCC indicates that a cable operator may use historical growth for the most recent twelve months for which the Company has actual data. Id. The FCC also indicates that general historical growth may be considered, as well as plans to build out the cable system to pass more homes during the projected period, and "any other events which will affect the growth of subscribership." Id.

Time Warner defended its use of the average of its true-up period subscribers to estimate the projected period's subscribers, despite the decrease in subscribers during the true-up period (Tr. at 9). The Company explained that it has historically used this average because it has been a good indicator of the subscribership (id.). The Company recognized that it has lost subscribers in the Athol System (id.). The Company attributed this decrease to competition from satellite video services, and from a general decline in population in the area (id. at 9-11). However, Time Warner now expects to stabilize its subscriber base and actually increase subscribers during 2006 (id. at 9). Since last year, Time Warner has been able to provide high speed Internet service to Athol System subscribers and now offers these subscribers a bundled package of cable and high speed Internet services (id. at 10).[3] Time Warner stated that in the Athol System, it has experienced "some stronger subscriber response" (id. at 11). Also, when Time Warner was asked whether bundled services had led to increased subscribership elsewhere, the Company replied that "[o]ur experience elsewhere is that this has been true" (id. at 10-11).

In this proceeding, we will accept Time Warner's use, for the Athol System, of the average subscriber count for the true-up period as its average estimated subscribership for the

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[3] Time Warner's Pittsfield System subscribers are additionally offered telephone service as part of their bundled services (Tr. at 12).

projected period. However, the FCC's statement that historical growth is an acceptable method of estimating projected period subscribership also implies that if there is a consistent decrease in total subscribers, the estimated subscribership in the projected period should be decreased accordingly. The Cable Division will monitor Time Warner's subscriber totals and will review, in the next proceeding, whether the Company's expectations materialize.

We find that Time Warner's FCC Form 1240 filing for the Athol System raises no other issues. Accordingly, based on our review of the record, we conclude that the BST MPR established by the FCC Form 1240 filed for Athol and Orange is just and reasonable and in compliance with applicable law.

III. REVIEW OF THE FCC FORM 1205

A. Standard of Review and Burden of Proof

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. Instructions for FCC Form 1205, at 7, 12-13. The FCC Form 1205 is prepared on an annual basis using information from the cable operator's previous fiscal year. Id. at 3. Subscriber charges established by the FCC Form 1205 shall not exceed charges based on actual costs as determined in accordance with the FCC's regulatory requirements. 47 C.F.R. § 76.923(a)(2). As with the FCC Form 1240, 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 of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; Rate Order at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

B. Discussion and Analysis:
Increase in National Labor Hours and Equipment Rentals

On its current FCC Form 1205, Time Warner reports that during the fiscal year covered by the form, which ended on September 30, 2005, Company personnel expended a total of 7,768,007 labor hours for the maintenance and installation of customer equipment and services (Exh. Time Warner-3, at 3, Step A, Line 6). This was an increase of 956,664 hours, or 14 percent, over the total of 6,811,343 such hours Time Warner reported for the previous fiscal year. CTV 04-5, Exh. Time Warner-3, at 3, Step A, Line 6. The Company also reported that it had 6,041,649 addressable and digital converters in service on September 30, 2005; an increase of 256,059 units, or 4 percent, over the 5,785,590 units Time Warner reported at the end of the preceding fiscal year (Exh. Time Warner-3, at 2, Schedule C, Line C, compare 04-5, at Exh. Time Warner-3, at 2, Schedule C, Line C). Unlike other regulated cable operators in Massachusetts, Time Warner includes within one category of converter, "Converter 1," its addressable, digital, high definition ("HD"), digital video recorder ("DVR") and HD-DVR converters (Tr. at 13).[4] The Company also reported that it had 5,714,255 remote controls in

[4] This aggregation of converters into one category is permitted by the Telecommunications Act of 1996, which allows cable operators to aggregate equipment into broad categories, such as converters, regardless of their varying degrees of functionality. Section 623(a)(7)(A) of the Communications Act of 1934, as amended,; 47 U.S.C. § 543(a)(7)(A). This same provision does not permit aggregation of converters used by subscribers who to receive only a regulated basic service tier. Id. For these subscribers, Time Warner has a separate converter category, Converter 2, of non-addressable converters, for which the MPR is $0.55 per month. (Exh. Time Warner-3, at 5). Time Warner has a small stock of these converters in its Albany Division office, for which there has been extremely limited demand (Exh. CTV-10).

service on September 30, 2005, an increase of 353,202 remote controls, or 7 percent, over the 5,361,053 units reported at the end of the previous fiscal year (id.). [5]

During the fiscal year reported on Time Warner's current national FCC Form 1205, the Company experienced no subscriber growth in the cable systems included on the form.[6] Therefore, the increase in labor hours, and the increase in the number of converters and remote controls in service, is a real per-subscriber increase, and not the consequence of an increase in the total number of subscribers included on the current form.

Time Warner explained that the increase in total labor hours was primarily due to the increase in installation activity related to the Company's roll-out of DVRs and increased video product demand related to bundled television, high speed internet and telephone services (Exh. CTV-5). Similarly, the Company explained that its increase in converters and remote controls in service was due to the increase in the number of its digital video customers, related to the roll-out of the DVR and the increased video product demand related to bundling (Exhs. CTV-8, -9). The Company further explained that there has been favorable customer response to its bundled services, which has resulted in much more activity related to installations

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5 Under the Instructions for FCC Form 1205, cable operators are directed to report, on Schedule C, the number of units for the last day of the fiscal year covered by the form. Instructions for FCC Form 1205, at 12.

6 Time Warner reported 9,291,530 basic subscribers on the previous form, and 9,257,759 basic subscribers on the current form, a decrease of 33,771 subscribers. (See Exh. Time Warner-3, at 4, Worksheet for Calculating Total Equipment and Installation Costs, Line 11, compare CTV 04-5, Exh. Time Warner-3, at 4, Worksheet for Calculating Total Equipment and Installation Costs, Line 11). Cable operators are directed to report subscriber totals for the last day of the fiscal year. Instructions for FCC Form 1205, at 21.

and equipment (Tr. at 14). In particular, with its DVR product, the Company finds that its service personnel probably spend some more time in the home when that product is placed in the field (id. at 14-15). The company's personnel are required to make a separate trip to a subscriber's home to provide a digital converter to subscribers who previously have only received addressable service (id. at 15-16, 19).

The Cable Division finds that Time Warner has adequately explained the increase in labor hours for the maintenance and installation of customer equipment, and the increases in the number of its addressable/digital converters and remote controls in service. The interest of the Company's subscribers in its new DVR offering, and in receiving bundled services, explains the increase in labor hours for its technicians engaged in installation and maintenance activities. In addition, the upgrade of subscribers' services would explain the increase in the number of converters and remote controls, because many subscribers upgrading to digital service may have previously received cable television over a cable-ready television set not requiring a converter or a specialized remote control. Based on our review, we find that the FCC Form 1205 filed by Time Warner establishes rates for equipment and installations that are reasonable and in compliance with applicable law.

V. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Time Warner's FCC Form 1240 as filed on September 30, 2005, for Athol and Orange.

Further, upon due notice, hearing, and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Time Warner's 2006 FCC Form 1240, entered as Exh. CTV-1, for Dalton, Pittsfield and Richmond.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts, as reasonable and in compliance with applicable statutes and regulations, Time Warner's FCC Form 1205 as filed on September 30, 2005 for Athol, Dalton, Orange, Pittsfield and Richmond.

The attached schedule provides, for each community, Time Warner's previous and current actual rates, as well as its proposed and approved maximum permitted rates.

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

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

Issued: June 12, 2006

Time Warner Cable
Basic Service Tier Programming and Equipment Rates

Programming	Previous Maximum Permitted Rate	Current Rate Effective January 1, 2006	Proposed Maximum Permitted Rate	Approved Maximum Permitted Rate
Albany Division Communities				
Athol	$10.75	$10.75	$13.59	$13.59
Dalton*	$7.11	$8.60	$8.60	$8.60
Orange	$10.75	$10.75	$13.59	$13.59
Pittsfield*	$7.11	$8.60	$8.60	$8.60
Richmond*	$7.11	$8.60	$8.60	$8.60

*Rates do not include Form 1235 upgrade segment.

Equipment	Previous Rate	Current Rate Effective January 1, 2006	Proposed Maximum Permitted Rate	Approved Maximum Permitted Rate
Converter 2	$7.60	$7.65	$8.25	$8.25
Basic Converter	-	$0.55	$0.55	$0.55
Remote Control	$0.35	$0.30	$0.31	$0.31

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 2002, c. 45, § 4. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within seven days of the filing of the initial petition for appeal.