



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

RATE ORDER

CTV 04-5 (Phase I)

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:

John E. Fogarty
Vice President & Assistant Chief Counsel, Regulatory
Time Warner Cable
290 Harbor Drive
Stamford, CT 06902

FOR: TIME WARNER CABLE, INC.
Petitioner

I. INTRODUCTION

On October 4, 2004, Time Warner Cable, Inc. (“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 Forms 1240 filing, Time Warner also filed a nationwide FCC Form 1205 with proposed equipment and installation rates based on a fiscal year ending September 30, 2003. Pursuant to the FCC's rate regulations, Time Warner implemented changes to its BST programming, equipment and installation rates on January 1, 2005. See 47 C.F.R. § 76.933(g).

The Cable Division held an evidentiary and public hearing in Boston on August 16, 2005. No communities intervened in the proceeding. The evidentiary record consists of Time Warner Exhibits 1 through 15, Cable Division Exhibits 1 through 4, and Time Warner’s responses to record requests issued by the Cable Division.

In this Order, the Cable Division will consider the FCC Form 1240 that Time Warner filed for the Athol system, and Time Warner’s nationwide FCC Form 1205. The Cable Division will issue, at a later date, a second order addressing the FCC Form 1240 that Time Warner filed for the Pittsfield System.

II. REVIEW OF FCC FORM 1240

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).

Based on our review of Time Warner’s FCC Form 1240 for the Athol System, as well as the Company’s responses to inquiries, the Cable Division determines that this form was prepared in compliance with federal laws and regulations. As such, we conclude that the BST maximum permitted rate (“MPR”) established by the Athol FCC Form 1240 is just and reasonable and in compliance with applicable law.

III. REVIEW OF THE FCC FORM 1205

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 2. 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).

Based on our review of Time Warner's nationwide FCC Form 1205 for all Massachusetts communities, as well as the Company's responses to inquiries, the Cable Division determines that this form was prepared in compliance with federal laws and regulations. However, our inspection of the 2005 Pittsfield rate card filed with the Cable Division, shows that Time Warner is charging \$0.35 per month for a remote control, which is \$0.02 higher than the \$0.33 established as the MPR for remote controls on the Company's FCC Form 1205 (Exh. Time Warner-15, at 5).¹ This inspection also shows that Time Warner is charging, for its converters, \$1.22 per month less than the MPR established on the FCC Form 1205 (id.). Given that no subscriber is likely to lease a remote control without a converter, and given the Company's ability to offset charges between remote control and converter rates, we conclude the minor misallocation in its actual rates results in no harm to subscribers. Accordingly, we conclude that the equipment and installation rates established by the FCC Form 1205 are just and reasonable and in compliance with applicable law. However, we suggest that in the future,

¹ Time Warner's 2005 Pittsfield rate card was filed with the Cable Division pursuant to the Cable Division's regulations at 207 C.M.R. § 10.02(2).

Time Warner establish its actual equipment rates so that no single rate exceeds the MPR calculated on the FCC Form 1205.

IV. 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 October 4, 2004, 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 FCC Form 1205 as filed on October 4, 2004, for Athol, Dalton, Orange, Pittsfield, and Richmond.

The attached schedule provides, for Athol and Orange, Time Warner's previous and current BST programming rates, as well as its proposed and approved BST MPR programming rates. The attached schedule also provides, for all communities, Time Warner's previous and current equipment rates, as well as proposed and approved maximum permitted equipment rates.

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

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

Issued: September 16, 2005

**Time Warner Cable
Basic Service Tier Programming and Equipment Rates**

FCC Form 1240

Community	Previous BST Rate	Current BST Rate	Proposed FCC Form 1240 BST MPR	Approved FCC Form 1240 BST MPR
Athol	\$10.75	\$10.75	\$12.28	\$12.28
Orange	\$10.75	\$10.75	\$12.28	\$12.28

FCC Form 1205

Digital/ Addressable Converter	\$7.60	\$7.60	\$8.82	\$8.82
Basic Converter	\$0.68	\$0.59	\$0.76	\$0.76
Remote Control	\$0.35	\$0.35	\$0.33	\$0.33

APPEALS

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.