



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

In the Matter of:)	
)	Docket No. CTV 02-16
)	Date Issued: November 21, 2003
Time Warner Entertainment- Advance/Newhouse Partnership)	Athol, CUID MA 0013
)	Dalton, CUID MA 0027
d/b/a Time Warner Cable)	Orange, CUID MA 0014
)	Pittsfield, CUID MA 0028
For a Determination of Cable Television Rates)	Richmond, CUID MA 0096
)	

ORDER ON COMPLIANCE FILING

APPEARANCES: Gary R. Matz
Vice President and Assistant General Counsel
Time Warner Cable
290 Harbor Drive
Stamford, CT 06902
FOR: TIME WARNER ENTERTAINMENT-
ADVANCE/NEWHOUSE PARTNERSHIP
Petitioner

On September 30, 2003, the Cable Television Division ("Cable Division") of the Department of Telecommunications and Energy ("Department") issued a Rate Order rejecting Time Warner Entertainment-Advance/Newhouse Partnership's ("Time Warner") Federal Communications Commission ("FCC") Form 1240 as filed on October 2, 2002, for Dalton, Pittsfield, and Richmond ("Pittsfield System"). The Cable Division directed Time Warner to recalculate its basic service tier ("BST") maximum permitted rate ("MPR") to offset programming costs by advertising revenue, and to refile its FCC Form 1240 for the Pittsfield System reflecting this recalculation. The Cable Division further directed Time Warner to file a refund plan for any BST overcharges that resulted from its treatment of programming costs. The Cable Division ordered Time Warner to refile its FCC Form 1240 and any refund plan on or before October 15, 2003.

Time Warner appealed the Cable Division's decision to the Department on October 14, 2003. On October 27, 2003, the Department issued its Decision and upheld the Cable Division's Rate Order. See Time Warner Entertainment-Advance/Newhouse Partnership, D.T.E. 03-97 (2003). Accordingly, on October 30, 2003, the Cable Division issued an Order Mandating Compliance and directed Time Warner to refile its FCC Form 1240, refund plan, and any supporting documentation in accordance with the Rate Order on or before November 14, 2003.

Time Warner submitted its compliance filing, which consisted of a revised FCC Form 1240 for the Pittsfield System and a refund plan. The revised FCC Form 1240 appropriately reflects the offset to programming costs of the Pittsfield System's percentage of

advertising revenue and results in an FCC Form 1240 BST MPR of \$9.22. Thus, we conclude that the FCC Form 1240, as now revised, complies with applicable state and federal law and precedent.

With respect to the Company's refund plan, we note that in its original filing, Time Warner reported a combined BST MPR of \$10.13, consisting of \$9.59 from the FCC Form 1240 and \$.54 from an FCC Form 1235 system upgrade increment that had been previously approved. The Company, at its discretion, implemented a BST rate of \$10.00. The Company's revised FCC Form 1240 reflects a combined BST MPR of \$9.76, consisting of the adjusted BST MPR as approved herein of \$9.22 and the full amount of the previously approved FCC Form 1235 upgrade of \$.54. The combined BST MPR is \$.24 less than the BST rate the Company has been charging its subscribers. As such, the Company proposed to refund \$2.88 to subscribers on the January 2004 bills.

The Company by initially choosing to implement a BST rate that was \$.13 less than its proposed BST MPR of \$10.13 chose to forego collection of the full FCC Form 1235 upgrade increment. After recalculating its programming costs in accordance with the Cable Division's Order, Time Warner now seeks to offset the BST programming rate refund by the full amount (\$.54) of the FCC Form 1235 upgrade increment. The Cable Division has concerns regarding such an offset, especially when it is implemented following a required reduction in the FCC Form 1240 BST MPR; however, the FCC condones this type of practice and thus we accept it in this instance. See e.g., Marcus Cable Associates, L.P., DA 99-378 (FCC 1999).

Nevertheless, we find that Time Warner's refund plan is not in compliance with federal law. See 47 C.F.R. § 76.942(e). The Company's proposed refund reflects only the overcharge of \$.24 per month calculated for the twelve month period and does not reflect any interest owed subscribers. The Cable Division directs Time Warner to file a revised refund plan that reflects the overcharges and the interest owed to subscribers, such plan to be filed no later than Wednesday, November 26, 2003. The Cable Division accepts Time Warner's proposed implementation date of January 2004 for refunding overcharges and interest to subscribers.

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

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