



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

In the Matter of:)	Docket No. CTV 01-7
)	Date Issued: August 9, 2002
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)	Richmond, CUID MA 0096
Cable Television Rates)	

RATE ORDER

APPEARANCES: Nancy P. Karm
Vice President, Finance
Time Warner Cable - Albany Division
1021 High Bridge Road
Albany, NY 12303
FOR: TIME WARNER CABLE
Petitioner

I. INTRODUCTION

On October 2, 2001, Time Warner Entertainment-Advance/Newhouse Partnership d/b/a 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”) Form 1240s. The Company filed two FCC Form 1240s; one for Athol and Orange (the “Athol system”), and the other for Dalton, Pittsfield and Richmond (the “Pittsfield system”). Time Warner also filed its Nationwide Consolidated FCC Form 1205 for the 12-month fiscal year ending on September 30, 2001. Pursuant to the FCC’s rate regulations at 47 C.F.R. § 76.933(g), Time Warner implemented changes to its BST programming, equipment and installation rates on January 1, 2002.

On April 30, 2002, the Cable Division held a public hearing in Boston on Time Warner’s pending filings. No communities intervened in the proceeding. The evidentiary record includes three Time Warner exhibits, three Cable Division exhibits consisting of Time Warner’s responses to our information requests, and responses to record requests posed by the Cable Division. No briefs were filed.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. Local rate regulators, such as the Cable Division, are required to review the Company’s FCC rate form filings to determine whether the rates are reasonable and in compliance with the Communications Act. 47 C.F.R. §§ 76.922, 76.923, 76.930.

The FCC Form 1205 establishes rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. FCC Form 1205 Instructions at 7, 12-13. 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 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).

The FCC Form 1240 allows a cable operator to annually update its basic service tier 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 FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A); 47 C.F.R. § 76.922(e)(iii)(2)(A). Although cable operators may project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable, 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 FCC rate forms is found in the FCC's rate regulations. Specifically, the regulations provide that the rate regulator shall assure that the rates comply with the requirements of 47 U.S.C. § 543 of the Cable Television Consumer and Competition Act of 1992 as amended (the "Cable Act"). 47 C.F.R. § 76.922(a). The Cable Division may accept as in compliance with the statute basic service tier rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by 47 C.F.R. § 76.922(c), and may also accept equipment and installation charges that are calculated in accordance with 47 C.F.R. § 76.923. In addition, the Cable Division shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates are reasonable and comply with federal regulations, the burden of proof is on the cable operator to demonstrate that its proposed rates for the basic service tier and accompanying equipment comply with 47 U.S.C. § 543 and implementing regulations. 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 (released May 3, 1993) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

III. DISCUSSION AND ANALYSIS

A. The FCC Form 1205: Equipment Charges

In this proceeding, Time Warner calculated its equipment charges using nationwide data for the first time (Exh. Time Warner-3). Time Warner's two previous FCC Form 1205 filings had included only its Upstate New York and Massachusetts Region.¹ Time Warner Entertainment-Advance/Newhouse Partnership, Docket No. Y-00 INC, Y-00 EQU, Y-00 UPG (2000) ("2000 Order") at 1; Time Warner Entertainment-Advance/Newhouse Partnership, Docket No. CTV 00-6 (2001) ("2001 Order") at 1.

Time Warner proposed to increase its monthly lease rate for addressable and

¹ This region, officially the New York State Region, consists of five Divisions: the Albany Division, which includes the Pittsfield and Athol systems, as well as the Binghamton, Liberty, Rochester and Syracuse Divisions (Exh. CTV-1, at "New York State" tab). Time Warner Cable has a total of 26 Regions (id. at "National" tab).

digital converters to \$5.80 (Exh. Time Warner-3).² Previously, the Cable Division approved a rate of \$3.99 for addressable and digital converters. 2001 Order at 11.

Time Warner stated that its higher monthly converter rate was primarily due to an increase in the number of digital converters in service in Athol and Pittsfield, as well as in the rest of the country (RR-CTV-2). The Company said that the converter rate is affected by the increase in the deployment of digital converters, whose average cost is \$305.00, “which is two to three times the cost of the older less complex converters” (*id.*). At the public hearing, the Company explained that as more expensive digital units are put into service, the retirement of the less expensive addressable converters raises the average converter price (Hearing Audiotape at Side A, Counter Nos. 366-368).

The Company addressed its decision to aggregate its 26 regional filings into a single nationwide filing (*id.* at Counter Nos. 365-366; see Exh. CTV-1, at “National” tab). The Company explained that it introduces digital converters in a region when that region has been technically upgraded to provide digital service (*id.* at Counter Nos. 378-381). To recover the costs of the new digital converters, Time Warner would have to adjust rates regionally, and in some regions the monthly converter rate could peak above \$7.00 (*id.* at Counter Nos. 382-388). According to the Company, it sought to avoid such a drastic rate adjustment, so it decided to aggregate all of its regions together, resulting in an aggregate rate lower than \$7.00 (*id.* at Counter Nos. 388-396). The Company said that the aggregate converter rate would peak near its current level of \$5.80; after which it would decline as the net book value of the digital converters decreases because of depreciation (*id.* at Counter Nos. 400-411).

Cable operators may aggregate their equipment filings “at a franchise, system, regional, or company level.” 47 C.F.R. § 76.923(c)(1). Thus, Time Warner’s nationwide FCC Form 1205 filing is authorized by the FCC’s rules. Moreover, while the Cable Division is concerned with the magnitude of Time Warner’s proposed converter rate increase, we recognize that the Company’s use of a nationwide Form 1205 filing mitigates the rate consequences to subscribers of universal deployment of digital equipment. Therefore, we accept Time Warner’s Nationwide Consolidated FCC Form 1205 as filed.

² The addressable and digital converters are combined as “Converter 2” on the Company’s FCC Form 1205 (Exh. Time Warner-3, at 3, 4 and 7). In its nationwide FCC Form 1205, Time Warner noted, with respect to its equipment and installation rates, that “[t]he actual amount charged may be less than the amount listed.” (Exh. Time Warner 3, at 7). Effective January 1, 2002, the Company in Massachusetts began to charge a monthly Converter 2 rate of \$5.60 (Exh. CTV-2).

B. The Pittsfield System FCC Form 1240: The Maximum Permitted Rate

Time Warner proposed a BST “Projected Maximum Rate” of \$8.74 on its Pittsfield system FCC Form 1240 (Exh. Time Warner-2). This rate has two components: the BST MPR of \$8.20 established on the FCC Form 1240, at Line I9 (id. at 4), and the FCC Form 1235 Network Upgrade surcharge of \$0.54, approved in the 2001 Order. Time Warner’s rate card for the Pittsfield system shows that effective January 1, 2002, the Company charged subscribers a BST rate of \$8.50, not \$8.74.³ Thus, it appears from the rate card that Time Warner is in fact charging less than its MPR. We note that the FCC has stated that where an operator’s BST rate charged to subscribers contains an FCC Form 1235 Upgrade segment, the operator must first exhaust the entire available FCC Form 1240 BST rate before availing itself of the Upgrade segment. Therefore, in its next filing, Time Warner must complete that portion of Worksheet 8 that relates to the current projected period using the BST MPR calculated on this form, \$8.20. This will ensure that no portion of the \$0.54 FCC Form 1235 Upgrade segment will flow through the FCC Form 1240 true-up mechanism. Bresnan Communications Company, Bay City, MI, DA 99-1779 (released September 7, 1999); Bresnan Communications Company, Bay City, MI, DA 98-1877 (released September 18, 1998).

IV. 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 1205 as filed on October 2, 2001, for Athol, Dalton, Orange, Pittsfield and Richmond.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts Time Warner’s FCC Form 1240s as filed on October 2, 2001, for Athol, Dalton, Orange, Pittsfield and Richmond.

³ The Cable Division’s regulations require each cable operator to file its programming services, rates and charges, and samples of actual monthly bills, with us by March 15 of each year. 207 C.M.R. § 10.01(2) and 10.02(6). Time Warner made this required filing for its Pittsfield system on March 8, 2002. The Cable Division hereby takes administrative notice of this filing pursuant to G.L. c. 30A, § 1(15) and 801 C.M.R. § 1.01(10)(h).

The attached schedule provides the current and maximum permitted basic service tier programming and equipment rates for each community.

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

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

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.

