

Commonwealth of Massachusetts  
Department of Telecommunications and Energy  
Cable Television Division

In the Matter of: ) Docket No.: Y-99 INC  
) Date Issued: July 19, 1999  
)  
Time Warner Cable ) Acushnet, CUID MA 0131 Medford, CUID MA 0048  
) Ashland, CUID MA 0231 Medway, CUID MA 0189  
) Athol, CUID MA 0013 Melrose, CUID MA 0097  
) Bellingham, CUID MA 0221 Mendon, CUID MA 0252  
) Bridgewater, CUID MA 0269 Norfolk, CUID MA 0248  
) Canton, CUID MA 0173 Orange, CUID MA 0014  
) Chelsea, CUID MA 0064 Pittsfield, CUID MA 0028  
) Dalton, CUID MA 0027 Richmond, CUID MA 0096  
) Dover, CUID MA 0314 Salem, CUID MA 0063  
) Everett, CUID MA 0047 Seekonk, CUID MA 0249  
) Fairhaven, CUID MA 0132 Sharon, CUID MA 0211  
) Foxborough, CUID MA 0176 Stoneham, CUID MA 0101  
) Holliston, CUID MA 0236 Swampscott, CUID MA 0114  
) Hopedale, CUID MA 0218 Wakefield, CUID MA 0164  
) Lynn, CUID MA 0113 Walpole, CUID MA 0220  
For a Determination of ) Malden, CUID MA 0012 Winthrop, CUID MA 0061  
Cable Television Rates ) Mansfield, CUID MA 0186 Wrentham, CUID MA 0203  
) Medfield, CUID MA 0258

**RATE ORDER**

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FOR: THE TOWN OF CANTON  
Intervenor

## I. INTRODUCTION

On September 30, 1998, Time Warner Cable (“Time Warner” or “the Company”)<sup>1</sup> filed with the Cable Television Division (“Cable Division”)<sup>2</sup> of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240s<sup>3</sup> for each of the above-captioned communities.<sup>4</sup> On October 22, 1998, Time Warner filed revised FCC Form 1240s for all communities except Athol, Dalton, Orange, Pittsfield and Richmond. Further revised FCC Form 1240s were filed for Bellingham, Canton and Hopedale on November 23, 1998. Pursuant to 47 C.F.R. § 76.933(g), Time Warner put the proposed BST programming rates, as revised, into effect on January 1, 1999.

The Cable Division held a public hearing on Time Warner’s pending filings in Boston on May 11, 1999. The Town of Canton intervened in this proceeding. The evidentiary record includes 36 Time Warner exhibits, seven Cable Division exhibits consisting of Time Warner’s responses to our information requests, and responses to record requests posed by the Cable Division and the Town of Canton. No briefs were submitted by any party.

## II. STANDARD OF REVIEW AND BURDEN OF PROOF

The standard under which the Cable Division must review rate adjustments on FCC rate forms reflecting inflation, changes in external costs or changes in the number of regulated channels is found in the FCC’s rate regulations. Specifically, the regulations provide that the rate regulator shall ensure that the rates comply with the requirements of the Cable Television Consumer and Competition Act of 1992 as amended (the “Cable Act”),

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<sup>1</sup> Time Warner Cable operates its Massachusetts Cable Systems through three separate entities. Time Warner Entertainment Company, L.P. holds the licenses for 12 communities in Boston’s northern suburbs: Chelsea, Everett, Lynn, Malden, Medford, Melrose, Salem, Somerville, Stoneham, Swampscott, Wakefield and Winthrop. Cablevision Industries Corporation, through subsidiaries, holds the licenses for 19 communities south and southwest of Boston: Acushnet, Ashland, Bellingham, Bridgewater, Canton, Dover, Fairhaven, Foxborough, Holliston, Hopedale, Mansfield, Medfield, Medway, Mendon, Norfolk, Seekonk, Sharon, Walpole and Wrentham. Time Warner Entertainment - Advance/Newhouse Partnership holds the licenses for five Western Massachusetts communities: Athol, Dalton, Orange, Pittsfield and Richmond.

<sup>2</sup> Formally, “division of community antenna television” under G.L. c. 166A, § 2. It was previously named the “community antenna television commission” under G.L. c. 166A, § 2 before it was merged into the Department of Telecommunications and Energy, effective November 25, 1997.

<sup>3</sup> 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.

<sup>4</sup> Time Warner’s Somerville cable system is no longer subject to rate regulation, because the FCC has determined that Time Warner is subject to effective competition in Somerville from RCN-BecoCom, LLC. See Time Warner Entertainment Advance/Newhouse Partnership d/b/a Time Warner Cable, Petition for Determination of Effective Competition, Somerville, MA, DA 99-285 (released February 5, 1999).

at 47 U.S.C. § 543. 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 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 under federal law. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates comply with the federal regulations, the burden of proof is on the cable operator to demonstrate that its initial rates for the basic service tier and accompanying equipment, or proposed increases in these rates, 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) ¶ 129; see also 47 C.F.R. § 76.937(a). 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)(ii)(A); 47 C.F.R. § 76.922(e)(iii)(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)(ii)(A). Accordingly, the Cable Division must determine that upon a showing by Time Warner, the rates are in compliance with the Cable Act and 47 C.F.R. §§ 76.922 and 76.923.

### III. DISCUSSION AND ANALYSIS

Generally, the Cable Division finds that Time Warner's FCC Form 1240s comply with the applicable federal law. However, several issues with respect to Time Warner's FCC Form 1240 are addressed herein. Specifically, we address the Company's channel movements in Acushnet and Fairhaven, its rate reduction in Ashland, its treatment of franchise-related costs in Medway, its treatment of access fees in the former Cablevision Industries ("CVI") communities<sup>5</sup> and the true-up period applicable to its five western Massachusetts communities.

#### A. Channel Movements in Acushnet and Fairhaven

Upon the Cable Division's request for information, Time Warner reviewed its current and previous year's filings for Acushnet and Fairhaven, and noted that an incorrect number of average channels per regulated tier had been used on the current filing (Exh. CATV-1). As recalculated, Time Warner has reduced the BST MPR in Acushnet from \$10.83 to

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<sup>5</sup> Time Warner acquired the following franchises from CVI: Acushnet, Ashland, Bellingham, Bridgewater, Canton, Dover, Fairhaven, Foxborough, Holliston, Hopedale, Mansfield, Medfield, Medway, Mendon, Norfolk, Seekonk, Sharon, Walpole and Wrentham.

\$10.19, and in Fairhaven from \$11.15 to \$10.53 (*id.*). The Cable Division determines that the BST MPRs for Acushnet and Fairhaven as calculated in Exhibit CATV-1 are reasonable. In both instances, the BST MPR of \$10.09 being charged by the Company is below the recalculated MPR, and thus, no rate adjustment is necessary.

B. The Rate Reduction in Ashland

Time Warner's September 30, 1998 and October 22, 1998 FCC Form 1240s for Ashland established a BST MPR of \$13.00 when franchise fees are removed (Exh. TW-2). This rate became effective on January 1, 1999. Time Warner filed revised FCC Form 1240 for Ashland on January 19, 1999 as a result of its review of the Cable Division's Rate Order concerning the treatment of public, educational, and government ("PEG") access payments. Time Warner Cable, Acushnet et al., Y-97 INC at 16.<sup>6</sup> This revised form reduced the BST MPR, with franchise fees removed, to \$12.89. However, according to Time Warner, the previous Rate Order did not address specifically the computation of Ashland's BST MPR and thus, the Company did not decrease Ashland's BST rate, "pending the outcome of the basic rate hearing" (Letter of Randall M. Walther to the Cable Division, January 15, 1999 at 1).

On April 27, 1999, pursuant to the Division's information request, Time Warner provided a FCC Form 1240 for Ashland which reported a BST MPR of \$12.88 (Exh. CATV-3).<sup>7</sup> The Cable Division finds that Time Warner has used an appropriate methodology in the treatment of access fees and calculation of its MPR in this revised form. Therefore, the Cable Division approves the BST MPR as calculated in Exhibit CATV-3 as reasonable. Accordingly, the Cable Division directs Time Warner to adjust its Ashland BST rate and make the appropriate refund to all BST subscribers on its next available billing cycle, in accordance with a refund plan to be filed with and approved by the Cable Division.

C. Franchise-Related Costs in Medway

In its FCC Form 1240 filings for Medway, Time Warner reported an increase in franchise-related costs compared with the previous year's filing (Exh. TW-20). The Company explained that this increase was due to the Medway license renewal, which occurred on February 22, 1998 (Exh. CATV-6). On the previous year's filing, Time Warner had not included a projection for these post-renewal costs (*see id.*). Time Warner further acknowledged that it had discovered an error in Medway's franchise-related costs, which it corrected on the FCC Form 1240 filed in response to the Cable Division's information request (*id.*). The Company also removed the five percent franchise fee amount from the BST and charged it as an external cost (Exh. CATV-3). The recomputed franchise-related

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<sup>6</sup> Revised FCC Form 1240s which complied with the previous Rate Order were filed on January 6, 1999 for Bellingham, Canton, Hopedale and Medway.

<sup>7</sup> Exhibit CATV-3 also includes revised FCC Form 1240s for Acushnet, Bellingham, Bridgewater, Canton, Fairhaven, Hopedale, Mansfield, Medfield and Medway.

costs reduced the BST MPR from \$15.31 to \$14.20. The Cable Division determines that the BST MPR calculated in Exhibit CATV-3 is reasonable. The Company is currently charging a BST rate of \$13.95 in Medway, and thus, no refunds are necessary.

D. Access Fees in Former CVI Communities

In our September 30, 1998 Rate Order, the Cable Division instructed Time Warner to remove the access fee percentage from the BST in many communities and to charge the fee external to the BST. Time Warner Cable, Acushnet et al., Y-97 Inc at 16. In its initial and revised filings received for many of the former CVI communities, Time Warner reduced the operator-selected BST for the projected period on FCC Form 1240, Line I10, by the appropriate rate percentage in order to comply with the Cable Division's directive. However, the BST MPR shown on Line I9 of the current FCC Form 1240s has not been adjusted to remove the access fee percentage. The Division's concern is that in the next FCC Form 1240 filing, the operator would use the BST MPR, including the access fee, to establish its true-up rate. Comparing this rate with the actual rate charged (exclusive of the access fees) would give the company an unwarranted windfall in establishing its next rate. In response to an information request, Time Warner revised the forms and removed the franchise fee percentage from the MPR (Exh. CATV-3). By this method, no access fees would be included in the true-up rate established on the next FCC Form 1240. On April 27, 1999, Time Warner provided revised FCC Form 1240s for Bellingham, Bridgewater, Canton, Hopedale, Mansfield, Medfield and Medway (Exh. CATV-3). However, Time Warner failed to correct the Dover FCC Form 1240. On June 29, 1999, Time Warner provided a revised FCC Form 1240 for Dover following the Cable Division's request (CATV-RR-3). We find that these revised filings reflect appropriate methodology and result in rates which are reasonable.

E. The True-Up Period in Athol, Dalton, Orange, Pittsfield and Richmond

In its September 30, 1998 FCC Form 1240 filing for the projected calendar year 1999, Time Warner used a true-up period running from January 1, 1998 to December 31, 1998 for Athol, Dalton, Orange, Pittsfield and Richmond (Exhs. TW-3, TW-8, TW-24, TW-25 and TW-26). This true-up calculation included a projection for the three months October 1, 1998 through December 31, 1998, for which actual data were not yet available.

The FCC has ruled that "the true-up period should indicate real, not projected, cost data." Memorandum Opinion and Order, Time Warner Cable Chatham County, et al., DA 98-967 (released May 26, 1998) at ¶ 7. Given that Time Warner's proposed rates for Athol, Dalton, Orange, Pittsfield and Richmond include projected costs as part of the true-up calculation, the Cable Division finds the proposed rates do not comply with federal law. Therefore, pursuant to the Cable Division's request, on April 23, 1999 Time Warner provided FCC Form 1240s reporting only a nine month true-up period for which actual cost data were available (Exh. CATV-7). As recalculated in Exhibit CATV-7, the BST MPR in

Athol and Orange is reduced from \$10.16 to \$10.10, and in Dalton, Pittsfield and Richmond from \$7.13 to \$7.07. The Cable Division concludes that the rates contained in Exhibit CATV-7 are reasonable and compliant with applicable law. Accordingly, the Cable Division approves the BST MPRs for Athol, Dalton, Orange, Pittsfield and Richmond as recalculated in Exhibit CATV-7. In all five communities, the approved MPR exceeds the actual rates Time Warner has charged since January 1, 1999, so no refunds are necessary.

#### 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 1240s as filed on October 22, 1998 for Chelsea, Everett, Foxborough, Holliston, Lynn, Malden, Medford, Melrose, Mendon, Norfolk, Salem, Seekonk, Sharon, Stoneham, Swampscott, Wakefield, Walpole, Winthrop and Wrentham.

Consistent with this Rate Order, the Cable Division accepts as reasonable and in compliance with applicable statutes and regulations, Time Warner's FCC Form 1240s as provided on April 23, 1999 for Athol, Dalton, Orange, Pittsfield and Richmond. The Cable Division further accepts as reasonable and in compliance with applicable statutes and regulations, Time Warner's FCC Form 1240s as provided on April 27, 1999 for Acushnet, Ashland, Bellingham, Bridgewater, Canton, Fairhaven, Hopedale, Mansfield, Medfield and Medway. The Cable Division further accepts as reasonable and in compliance with applicable statutes and regulations, Time Warner's FCC Form 1240 as provided on June 29, 1999 for Dover.

The Cable Division directs Time Warner to file a refund plan for the Town of Ashland, consistent with Section III. B of this Order by August 2, 1999.

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

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

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

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\* Formally, the "Division of Community Antenna Television" under G.L. c. 166A, § 2.

### **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. 1997, c. 164, § 273. 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 7 days of the filing of the initial petition for appeal.