

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 21, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.

CASE 03-V-1722 - Application of Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable (Rochester Division) for Approval of the Renewal of its Cable Television Franchise for the Town of East Bloomfield (Ontario County).

ORDER APPROVING RENEWAL

(Issued and Effective April 6, 2007)

BY THE COMMISSION:

The above-captioned application was submitted by Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable (Rochester Division) on January 19, 2007. A copy of the same was served on the Town of East Bloomfield and all local notice requirements were met. No comments or objections have been received.

This application is governed by Section 222 of the Public Service Law, which requires our approval unless we find specific violations of law, Commission regulations or the public interest. Section 222(4) of the statute provides that we may approve the renewal contingent upon compliance with standards or conditions consistent with the public interest. Having reviewed the application in the context of applicable statutory and regulatory standards, we have determined to approve the renewal subject to conditions as hereinafter set forth.

The application seeks our approval of a franchise renewal authorized by the Town of East Bloomfield (Ontario County) by Resolution of the Town Board dated December 11, 2006 after a duly noticed public hearing held on June 26, 2006. The term of the renewal is ten years measured from December 11, 2006.

The renewal agreement substantially complies with Section 895.1 of the Commission's rules, except as noted below.

First, Section 2.4 of the proposed agreement provides that the franchise shall continue for a period of ten (10) years and purports to extend the franchise, at the sole discretion of the Franchisee, for an additional five (5) years "by notice to the Town (and the Commission) . . . pursuant to (unspecified) procedures established by applicable Federal and State laws, Rules and regulations (sic)." We remind the parties that Section 895.1(g) of our rules permits a provision "specifying the franchise term which shall be up to a maximum of 15 years." This provision envisions a franchise term agreed upon by both parties, not a renewal option unilaterally decided upon by the franchisee. If the parties intend to renew the agreement after the franchise period specified, Part 891 of our rules sets forth the procedure renewal. The parties are required to comply with these rules.

Second, the agreement does not fully comply with Section 895.1(i) of our rules which requires the franchisee to indemnify the municipality and hold it harmless from all liability, damage, cost or expense as a result of conduct undertaken pursuant to the franchise. The limitation in Section 5.1 of the proposed agreement to "all damages and penalties . . . as a result of or due to Franchisee's construction or operation of the System" would narrow the scope of indemnification in a manner inconsistent with the municipal protections envisioned by our rules. Our approval is expressly conditioned on the parties' conforming Section 5.1 of the agreement with Section 895.1(i) of our rules.

Third, Section 18 of the agreement indicates that the company shall not, without the written consent of the Town, abandon its cable system or any portion thereof "in such a way as would limit its ability to continue to provide cable service to all subscribers." The parties are reminded that Public Service Law Section 226 also requires our approval, in addition to the Town's approval, prior to the company's abandonment of

any cable service or portion thereof. Further, the quoted language is inconsistent with Section 226 and Section 895.1(h) of our rules insofar as it would restrict the Commission and the Town from exercising their authority to review and determine whether to approve a request to abandon a portion of the company's cable system. Therefore, our approval is expressly conditioned upon striking the quoted language from the agreement.

Fourth, Section 895.1(d) of our rules requires an explicit provision that access to the cable system may not be denied to any group of potential residential subscribers based on income. Accordingly, the terms set forth in Section 895.1(d) shall be deemed a part of the franchise agreement as if specifically set forth therein and our approval of this renewal is specifically conditioned on this modification.

Fifth, Section 895.1(t) of our rules requires an explicit provision stating that any valid reporting requirements in the franchise may be satisfied with system-wide statistics except those related to franchise fees and customer complaints. It is a condition of our approval that Section 895.1(t) be deemed a part of the agreement as if specifically set forth therein.

Finally, the agreement contains additional provisions that are not required by Part 895 of our rules. Our approval of these provisions will be granted to the extent that they pertain to the provision of cable service and are, and remain, consistent with Article 11 of the NY Public Service Law, our rules and regulations, our policies, orders, and applicable federal statutes and regulations. In the event of an ambiguity in any such provision, or among separate provisions, the provision will be construed in the manner most favorable to the franchisor.

The Commission orders:

1. Pursuant to Section 222 of the Public Service Law and the rules and regulations of this Commission, the application of Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable (Rochester Division) for renewal of its cable television franchise for the Town of East Bloomfield (Ontario County) is hereby approved, subject to the conditions set forth herein. The term of the renewal shall expire on December 10, 2016.

2. This order does not in any way confer rights or privileges other than those granted in the underlying franchise and the certificate holder remains subject to the obligations imposed by Article 11 of the Public Service Law, the underlying franchise and all applicable rules, regulations and orders of this Commission.

3. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary