

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 07-V-0114 - Application of Time Warner Entertainment-Advance Newhouse Partnership (Syracuse Division) for Approval of the Renewal of its Cable Television Franchise for the Town of Brownville (Jefferson 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 (Syracuse Division) on January 23, 2007. A copy of the same was served on the Town of Brownville 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 by the Town of Brownville by Resolution of the Town Board dated May 4, 2006 after a duly noticed

public hearing held on May 3, 2006. The term of the renewal is for ten years measured from May 3, 2006.

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

First, we note that Section 16 of the proposed renewal agreement, while purportedly affirming the company's commitment to comply with the current minimum standards for public, educational and governmental (PEG) access as set forth in Section 895.4 of the Commission's rules, refers to these obligations as "the minimum standards . . . for '(PEG) access channels'." Because this language might be interpreted contextually as limiting the company's PEG obligations, we remind the parties that such obligations encompass more, including "access facilities" (though not limited thereto), and various other collateral responsibilities set forth in Section 895.4. Accordingly, this order will be granted on condition that the franchisee complies with minimum standards for PEG access as such standards are set forth in Section 895.1(f) and 895.4 of our rules.

Second, both Sections 2(e) and 19(b) of the proposed renewal agreement attempt to anticipate changed circumstances that require specific conditional provision in this renewal. These circumstances include inconsistencies or conflicts that might arise between the terms and conditions of the current franchise and more favorable franchise terms and conditions that Time Warner envisions the Village might extend to a competitor. Likewise, Time Warner suggests some inconsistency in state and federal law might occur at some indeterminate future time. The franchise provisions proposed in Sections 2(e) and 19(b) purport to address the unfavorable economic consequences foreseen as damaging Time Warner's franchise interests in these hypothetical scenarios by accomplishing automatic amendment(s) of the franchise. We note that any material modification of the franchise agreement under these provisions would constitute an amendment of the franchise subject to Section 222 of the Public Service Law and Subpart 892-1 of our rules.

The language of Section 2(e) of the proposed renewal also includes ambiguities that cannot be allowed to stand. Specifically, the word "overall" is used in three separate contexts in the first part of this section, apparently in an attempt to establish

quantitative and/or qualitative standards for assessing competitive imbalances that might be attributable to franchise terms negotiated by this municipality with future competitors of this franchisee. Because such language introduces additional uncertainty rather than clarify the positions of either party, our approval of this renewal will be expressly conditioned upon striking the quoted language from the agreement.

Third, Section 895.1(t) of the Commission's rules requires a provision in the franchise 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.

The franchise agreement contains additional provisions not required by Part 895 of the Commission's 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, our regulations, policies, and 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 (Syracuse Division) for renewal of its cable television franchise for the Town of Brownville (Jefferson County) is hereby approved, subject to the conditions set forth herein. The term of the renewal is ten years and shall expire on May 3, 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