

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 15, 2010

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 10-V-0092 - Application of Charter Communications
Entertainment I, LLC for Approval of the Renewal
of its Cable Television Franchise for the Town
of Berlin (Rensselaer County).

ORDER APPROVING RENEWAL
(Issued and Effective June 1, 2010)

BY THE COMMISSION:

On February 25, 2010, Charter Communications
Entertainment I, LLC (Charter) submitted an application
requesting approval of the renewal of its cable television
franchise with the Town of Berlin (Town). The Town authorized
the renewal of the franchise by Resolution of the Town Board
dated December 10, 2009, after a duly noticed public hearing
held on the same date. The term of the renewal is five years,
commencing on the date that this Order is issued and effective.

No renewal of a franchise is effective without the
approval of the Commission (Public Service Law (PSL) §222). The
Commission is required to approve an application for a franchise
renewal, unless it finds specific violations of law, Commission
regulations, or the public interest (PSL §222(3)). Failure to
conform to franchise standards established in Commission
regulations is not precluded upon a Commission finding that
approval of the franchise renewal would serve the public
interest; and, the Commission may approve the application

contingent upon compliance with statutory and regulatory standards, terms, or conditions that are not met by the franchise renewal (PSL §222(3) and (4)). Commission regulations (16 NYCRR §891.2 and Part 895) require an application for renewal to conform to minimum standards for required contents of franchises and set forth procedural requirements for municipal review of the franchise renewal, including public notice, opportunity for comment, and a public hearing.

After reviewing the application, we determine that approval of the franchise renewal serves the public interest. Therefore, we approve the franchise subject to compliance with certain statutory and regulatory standards.

DISCUSSION

The Town complied with the procedural standards in our rules for authorizing renewal of a cable franchise. These include adequate public notice, opportunity for comment, and a public hearing upon notice to the public (16 NYCRR §894.7).

The renewal agreement substantially complies with the rules applicable to contents of franchise renewals (16 NYCRR Part 895). Approval of the franchise renewal is in the public interest because failure to approve would require the municipality and cable television company to expend significant time and resources to replicate their efforts to reach another agreement. Accordingly, we will exercise our discretion and approve the franchise renewal upon the condition that our approval is contingent upon compliance with certain statutory and regulatory requirements (PSL §222(4)).

The franchise renewal does not include a provision stating that the company shall not abandon its cable television service in any portion of the franchise without the written consent of the Town. Municipal approval is required before

abandonment of any service or portion thereof (PSL §226; 16 NYCRR §895.1(h)). Accordingly, we approve the franchise renewal upon the condition that §895.1(h) is deemed a part of the franchise renewal agreement.

The Commission's rules require that a franchise renewal contain a provision reserving to the municipality the right to adopt additional regulations necessary in the exercise of its police power and not materially in conflict with the franchise and consistent with all federal and state laws, rules, regulations, and orders (16 NYCRR §895.1(1)). In Section 5.3, the reference to federal and state laws, rules, regulations, and orders is omitted. Accordingly, we condition our approval of the franchise renewal on addition of the phrase "and consistent with all federal and state laws, rules, regulations and orders" to §5(3).

Our rules require that a franchise renewal include a description of the system as constructed and a description of system expansions or enhancements planned for construction during the term of the franchise (16 NYCRR §895.1(b)). The franchise renewal does not include the information required by these rules. Therefore, our approval of the franchise renewal is conditioned upon the submission of the information required in 16 NYCRR §895.1(b) to the Secretary to the Commission within 60 days of the effective date of this Order. After the information is submitted, it will be deemed part of the franchise renewal agreement.

The requirement in our rules (16 NYCRR §895.1(c)) is omitted from the franchise renewal. The rule requires:

A provision specifying that the franchisee shall construct and maintain its cable system using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe, thorough and reliable manner.

Accordingly, the franchise renewal is approved, upon the condition that §895.1(c) is deemed part of the franchise renewal.

Section 11.2(c) and (d) of the franchise renewal do not fully comply with our rules on system deployment and line extensions (16 NYCRR 895.5). Inconsistencies with our rules include substitution of a three year refund eligibility standard for our five year standard (16 NYCRR §895.5(b)(2)(iii)) and a mandatory service connection standard based on location of prospective subscribers 125 feet instead of 150 feet from an aerial feeder cable (16 NYCRR §895.5(b)(3)). Accordingly, the franchise renewal is approved, upon the condition that §11.2(c) and (d) of the franchise renewal are deemed null and void; and, §895.5(b)(2)(iii) and (3) are deemed a part of the franchise renewal agreement.

Section 17 of the franchise renewal agreement omits a precise amount or method of calculation of the franchise fee as required in our rules (16 NYCRR §895.1(o)). Therefore, our approval of the franchise renewal is conditioned upon the submission of the precise amount or method of franchise fee calculation to the Secretary to the Commission within 60 days of the effective date of this Order. The information submitted will be deemed a part of the franchise renewal agreement.

Our rules require a provision in a franchise renewal stating that all franchise reporting requirements may be satisfied with system-wide statistics, except those related to franchise fees and customer complaints (16 NYCRR §895.1(t)). It is a condition of our approval that §895.1(t) is deemed part of the franchise renewal.

The franchise agreement contains additional provisions that are not required by Part 895 of the Commission's rules. Our approval of these provisions is granted to the extent that

they pertain to the provision of cable service and are, and remain, consistent with PSL 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. The application of Charter Communications Entertainment I, LLC for renewal of its cable television franchise for the Town of Berlin (Rensselaer County) is approved, subject to the conditions set forth herein. The term of the renewal shall expire in five years, commencing on the date of the issuance of this Order.

2. Charter Communications Entertainment I, LLC shall submit a document to the Secretary to the Commission within 60 days of the effective date of this Order describing the system as constructed and planned system expansions or enhancements during the term of the franchise renewal, in accordance with the discussion in the body of this Order.

3. Charter Communications Entertainment I, LLC shall submit a document to the Secretary to the Commission within 60 days of the effective date of this Order stating the precise amount or method of calculation of the franchise fee, in accordance with the discussion in the body of this Order.

4. 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 Public Service Law Article 11, the underlying franchise, and all applicable rules, regulations, and orders of this Commission.

5. Upon compliance with Ordering Clauses 2 and 3, this proceeding is closed.

By the Commission,

JACLYN A. BRILLING
Secretary