

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 19, 2010

COMMISSIONERS PRESENT:

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

CASE 09-V-0629 - Application of Time Warner Entertainment-
Advance/Newhouse Partnership (Binghamton
Division) for Approval of the Renewal of its
Cable Television Franchise for the Town of
Norwich (Chenango County).

ORDER APPROVING RENEWAL

(Issued and Effective February 23, 2010)

BY THE COMMISSION:

On August 12, 2009, Time Warner Entertainment-
Advance/Newhouse Partnership (Binghamton Division) submitted an
application requesting approval of the renewal of its cable
television franchise with the Town of Norwich. The Town
authorized renewal by Resolution of the Town Board dated
July 13, 2009, after a duly noticed public hearing held on
June 8, 2009. 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 does not preclude Commission approval, if the
Commission finds that approval of the franchise renewal would

serve the public interest; and, the Commission may approve the application contingent upon compliance with Commission standards, terms, or conditions that are not met by the provisions in the franchise renewal agreement (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 this application in the context of applicable statutory and regulatory standards, we determine that the Town complied with the procedural requirements in the Commission's rules and that approval of the franchise renewal serves the public interest. We, therefore, approve the franchise renewal subject to compliance with certain Commission standards and requirements.

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 Town received no comments or objections to the franchise renewal.

With the exception of certain provisions, 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 the renewal 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 Commission requirements (PSL §222(4)).

Two provisions in Section 4 of the franchise are inconsistent with the Commission's authority and responsibility to review and approve franchise amendments and terminations.

The first provision states:

In the event any change to local, state or federal law occurring during the term of this Franchise eliminates the requirement for any persons desiring to construct, operate or maintain a cable system in the Municipality to obtain a franchise from the City [sic] for the construction, operation or maintenance of a cable system, then, at Grantee's sole option, Grantee shall have the right immediately to terminate this franchise in conjunction with NYSPSC Section 892.1.4 [sic]. If Grantee chooses to terminate this Franchise pursuant to the provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

This provision would authorize Time Warner at its sole option immediately to terminate this franchise. The phrase relating to immediate termination "in conjunction with Commission rules" (16 NYCRR §892-1.4) does not negate the express authority assumed by Time Warner Cable, at its sole option, immediately to terminate the franchise. In order to comply with the Commission's rules, Time Warner Cable is required to obtain prior Commission approval before amendment or termination of the franchise. The second provision in Section 4 of the franchise states:

Furthermore, in the event any change to local, state or federal law occurring during the term of this Franchise materially alters the regime of cable franchising applicable to any persons desiring to construct, operate or maintain a cable system in the Municipality in a way that reduces the regulatory or economic burdens for such person, then, at Grantee's sole option, Grantee shall have the right immediately to amend this Franchise to take advantage of such

regime change to similarly reduce the regulatory or economic burdens on Grantee.

This provision has the effect of allowing Time Warner Cable to become the sole decision maker in construing a change in law as a material alteration to cable franchising, concluding that the law reduces regulatory and economic burdens, and determining that an immediate amendment is warranted.

Time Warner Cable's right to immediately amend or terminate the franchise under these provisions does not provide any opportunity for public comment or affirmative action by the municipality (16 NYCRR §897.3(b)) and conflicts with the Commission's authority and responsibility to review and authorize a franchise amendment (PSL §222; 16 NYCRR §892-1.4 and §897.3) or order termination of a franchise prior to the expiration of its term (PSL §227). In the event of the need to amend or terminate the franchise, Time Warner Cable may notify the municipality and seek Commission approval of a franchise amendment. Therefore, the franchise renewal is approved, subject to the condition that the two provisions in Section 4 are null and void.

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 Time Warner Entertainment-Advance/Newhouse Partnership (Binghamton Division) for renewal of its cable television franchise for the Town of Norwich

(Chenango County) is approved, subject to the conditions set forth in this Order. The term of the renewal shall expire in five years, commencing on the date that this Order is issued and effective.

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 Public Service Law Article 11, 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