

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 22, 2007

COMMISSIONERS PRESENT:

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

CASE 03-V-1412 - Petition of the Town of Angelica (Allegany
County) for a Waiver of Certain Provisions of
9 NYCRR Part 594 of the Commission's Rules to
Provide Cable Television Service.

ORDER GRANTING WAIVER

(Issued and Effective August 29, 2007)

BY THE COMMISSION:

INTRODUCTION

On or about October 6, 2003 the Town of Angelica (Town), Allegany County, filed a petition for waiver of certain procedures in the Commission's rules relative to cable television franchising. The petition seeks a waiver of various provisions of 16 NYCRR Part 894¹ including: Section 894.1 which requires the establishment of a citizen advisory committee for the purpose of learning about cable communications and determining the communications needs and interests of the community; Section 894.2 which requires the preparation of a final report by the advisory committee and the submission of it to the Town board; Section 894.3 which provides for the adoption by the Town board of a specific request for proposals for a cable television franchise; and Section 894.4 concerning the public notices

¹ Since the petition was filed, the cable television rules have been renumbered. This Order reflects the new numbers.

required to advertise the availability of the request for proposals.

PUBLIC NOTICE

A Notice of Proposed Rulemaking regarding the proposed waivers was published in the State Register on October 29, 2003. No Comments were received.

DISCUSSION

These rules were first adopted at a time when only a small minority of the municipalities in this state were served by franchised cable television companies and, therefore, were designed to promote an understanding by the public and municipal officials alike of the nature and potential of cable television services. The rules were also designed to ensure that the opportunity for private companies to compete for franchises was widely publicized. Today, over ninety five percent of the population of the state has cable television service available to it and the overwhelming majority of municipalities have granted at least one cable television franchise. The extensive review and, in some cases, the protracted period of time for completion of the steps involved in granting a franchise as set forth in Part 894 may deter entry rather than promote and facilitate cable entry.

Here, the Town of Angelica has been engaged in the negotiation of a franchise with Time Warner Entertainment-Advance/Newhouse Partnership (Time Warner). Time Warner provides cable service throughout New York including approximately 2,798,762 subscribers and is in the forefront of deploying innovative, advanced services such as digital cable, cable modem service, video-on-demand and digital phone. Moreover, Time Warner provides cable service to the surrounding municipalities and, thus, there does appear to be an economic advantage in seeking cable service from another provider.

While each waiver request will be review on a case-by-case basis, here, there is sufficient basis to conclude that the

review of community needs and interests by a separate advisory committee and the issuance of a formal request for proposals are not necessary to protect the public interest. In addition, the public notice required of the hearing at which an additional competitive franchise may be considered will ensure the opportunity for public participation in any final decision by the Town board. Accordingly, the waivers are approved. The authority for this action is Public Service Law, Sections 216 (1) and 216(5).

The Commission orders:

1. Pursuant to Section 216(1) and 216(5) of the Public Service Law and the State Administrative Procedure Act, the petition of the Town of Angelica (Allegany County) for waiver of 16 NYCRR, Sections 894.1, 894.2, 894.3 and 894.4 is hereby granted.
2. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary