

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held in the City of  
New York on December 13, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

CASE 00-V-1745 - Application of Time Warner Entertainment-Advance  
Newhouse/Partnership for approval of the renewal  
of its cable television franchise for the Town  
of LeRoy (Genesee County).

ORDER APPROVING RENEWAL

(Issued and Effective February 16, 2001)

BY THE COMMISSION:

The above-captioned application was submitted by Time Warner Entertainment-Advance Newhouse/Partnership on October 12, 2000. A copy of the same was served on the Town 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 renewal franchise authorized by the Town of LeRoy by resolution of the Town Board dated August 24, 2000 after a duly noticed public

hearing held on the same date. The term of the renewal is ten years measured from the date of this order.

The renewal agreement substantially complies with Section 595.1 of the Commission's rules, except as noted below.

First, Section 595.1(g) limits the initial franchise term to not more than ten years. Section 2.4 of the agreement, which indicates that the term of the agreement will be eleven years following Commission approval, is inconsistent in this regard. Therefore, the term of the agreement will be ten years from the date of Commission approval.

Second, the agreement does not fully comply with Section 595.1(i) which would require 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 conditions precedent set forth in Section 5(2) are inconsistent with this provision. Section 5.2 shall not, in any manner, limit or preclude the company's responsibility to indemnify the Town as required by Section 595.1(i).

Third, Section 18 of the agreement indicates that the company may abandon a portion of its system, with the Town's approval, if such abandonment does not limit the company's ability to provide service to all customers. Section 595.1(h) of our rules prohibits abandonment by the company of any service or portion thereof without the written consent of the franchising municipality. In accord with Public Service Law Section 226, our approval will also be required prior to the company's abandonment of any service or portion thereof. Therefore, our approval will be expressly conditioned upon striking from the agreement the phrase in such a way as would limit its ability to provide cable service to all subscribers.

Fourth, Section 6.1 of the renewal agreement purports to limit the authority of the municipality to adopt ordinances or regulations pursuant to its police power to those that would not "impose any additional material or unreasonable economic or

technical burden on the Franchisee." In the absence of any justification submitted by either party in support of such limitation, our approval will be expressly conditioned upon striking the quoted language from the agreement so that Section 6.1 is consistent with Section 595.1(1) of our rules.

Fifth, Section 9.2 of the agreement purports to automatically extend the current franchise until either a new franchise has been granted or the franchisee has exhausted all appeals. We wish to remind the parties that Section 595.1(g) limits the terms of this franchise to ten years. If the parties intend to renew the agreement, Part 591 of our rules sets forth the procedures to renew this franchise and the parties will be required to abide by these rules in order to renew the franchise.

Finally, the franchise agreement contains additional provisions not required by Part 595 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 for renewal of its cable television franchise for the Town of LeRoy (Genesee County) is hereby approved, subject to the conditions set forth herein. The term of the renewal shall expire ten years from the date of this order.

2. This order does not in any way confer rights or privileges other than those granted in the underlying franchise

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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)

JANET HAND DEIXLER  
Secretary