

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 23, 2008

COMMISSIONERS PRESENT:

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

CASE 08-V-0119 – Application of Time Warner Entertainment-Advance Newhouse Partnership (Syracuse Division) for Approval of the Renewal of its Cable Television Franchise for the Town of North Elba (Essex County).

ORDER APPROVING RENEWAL

(Issued and Effective May 9, 2008)

BY THE COMMISSION:

The above-captioned application was submitted by Time Warner Entertainment-Advance Newhouse Partnership (Syracuse Division) on February 8, 2008. A copy of the same was served on the Town of North Elba 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 North Elba by Resolution of the Town Board dated October 9, 2007 after a duly noticed

public hearing held on July 10, 2007. The term of the renewal is for 10 years measured from October 9, 2007 and expiring on October 8, 2017.

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

As proposed, Section 4 of the franchise is inconsistent with the Commission's authority and responsibility to review franchise amendments, especially material changes in a franchisee's obligations to continue to provide necessary public services. The language "... at the Grantee's sole option..." and "... right immediately to terminate..." are inconsistent with the amendment procedures in Section 892-1.4, *et seq.* of our regulations. Moreover, since it can reasonably be said that this proposal contemplates the ultimate amendment of the franchise, namely termination of all the franchisee's performance obligations, consisting of an actual or constructive abandonment, our approval of a process anticipating a hypothetical occurrence or condition, would be inconsistent with Sections 222 and 226 of the Public Service Law, and Section 895.1(h) of our regulations (abandonment). Accordingly, our approval of the proposed renewal is specifically conditioned upon striking the quoted language from the franchise agreement and explicitly making this provision subject to our amendment procedures. If the Company wishes to terminate its franchise, or amend a material term in the agreement, it must follow the pertinent provisions of the Public Service Law and our rules and regulations with regard to obtaining municipal and Commission approval.

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 North Elba (Essex County) is hereby approved, subject to the conditions set forth herein. The term of the renewal is for 10 years measured from October 9, 2007 and expiring on October 8, 2017.

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