

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 18, 2007

COMMISSIONERS PRESENT:

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

CASE 00-V-2091 - Application of Time Warner Entertainment-Advance
Newhouse Partnership (Albany Division) for
Approval of the Renewal of its Cable Television
Franchise for the City of Cohoes (Albany
County).

ORDER APPROVING RENEWAL

(Issued and Effective May 1, 2007)

BY THE COMMISSION:

The above-captioned application was submitted by Time Warner Entertainment-Advance Newhouse Partnership (Albany Division) on January 28, 2006. A copy of the same was served on the City of Cohoes 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 City of Cohoes by Resolution of the City Board

dated July 12, 2006 after a duly noticed public hearing held on June 27, 2006. The term of the renewal is for ten years measured from the date of this order.

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

First, Section 895.1(d) of our rules requires that access to a cable system may not be denied to any group of potential residential subscribers based on income. It is a condition of our approval that Section 895.1(d) be deemed a part of the franchise agreement as if specifically set forth therein.

Second, this order will be granted upon condition that the franchisee comply with minimum consumer protection and customer service standards set forth in Parts 890 and 896 of the Commission's rules. Those standards are deemed a part of the franchise agreement as if specifically set forth therein.

Third, as proposed, Section 4.3 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.

Fourth, the agreement does not fully comply with Section 895.1(i)(1) of our rules which requires 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 limitation in Section 11.1 to only Adamages and penalties is inconsistent with this provision. In this regard, it will be a condition of this order that Section 895.1(i)(1) be deemed a part of the renewal agreement as if specifically set forth therein. The parties are also reminded that the conditions set forth in Section 11.1 of the agreement shall not, in any manner, limit or preclude the company=s responsibility to indemnify the City as required by Section 895.1(i)(1).

Fifth, we wish to remind the parties that Section 895.1(q) of our rules requires a provision stating that the terms of the franchise are subject to the Commission's approval. It will be a condition of this order that Section 895.1(q) be deemed a part of the renewal agreement as if specifically set forth therein.

Sixth, we wish to remind the parties that Section 895.1(r) of our rules requires that all applications for necessary approvals are to be filed with the Commission and the FCC within 60 days from the date the franchise is granted or amended. It will be a condition of this order that Section 895.1(r) be deemed a part of the renewal agreement as if specifically set forth therein.

Seventh, Section 4.1 of the agreement attempts to mirror Section 895.3 of our rules regarding level playing field. We will construe the provision in a manner consistent with Section 895.3.

Eighth, Section 895.1(t) of the Commission's rules requires a provision in the franchise that any valid reporting

requirements in the franchise may be satisfied with system-wide statistics except those related to franchise fees and customer complaints. It is a condition of our approval that Section 895.1(t) be deemed a part of the agreement as if specifically set forth therein.

Ninth, Section 895.1(s) of our Rules requires our approval in addition to municipal approval in the event of a transfer of ownership. It is a condition of our approval herein that Section 895.1(s) be deemed a part of the agreement as if specifically set forth therein.

Finally, Section 895.1(n) of our rules requires a provision in the franchise that indicates by title the office or officer of the municipality that is responsible for the continuing administration of the franchise. No such provision exists in the franchise before us. Accordingly, it will be a condition of our approval that within 30 days of the date of the order herein, the franchisor provides the Secretary of the Commission name of the person or entity who will be responsible for the continued administration of the franchise.

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 (Albany Division) for renewal of its cable television franchise for the City of Cohoes (Albany County) is hereby approved, subject to

the conditions set forth herein. The term of the renewal is for ten years measured 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 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. Within 30 days of the date of the order herein, the franchisor provides the Secretary of the Commission name of the person or entity who will be responsible for the continued administration of the franchise.

4. This proceeding is closed without further Commission action upon compliance with ordering clause 3.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary