

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 07-V-0492 - Application of Time Warner Cable LLC d/b/a Time Warner Cable for Approval of the Renewal of its Cable Television Franchise for the City of Port Jervis (Orange County).

ORDER APPROVING RENEWAL

(Issued and Effective August 29, 2007)

BY THE COMMISSION:

The above-captioned application was submitted by Time Warner Cable LLC d/b/a Time Warner Cable on April 26, 2007. A copy of the same was served on the City of Port Jervis 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 Port Jervis by Resolution of the Common Council dated February 12, 2007, after a duly noticed public hearing held on February 2, 2007. 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 14 of the agreement, which pertains to rates, is not consistent with Section 895.1(e) of our rules, which requires that any rates and charges be subject to regulation in accordance with federal law. It will be a condition of this order that Section 895.1(e) be deemed a part of the renewal agreement as if specifically set forth therein.

Second, Section 11 of the agreement indicates that the company shall not, without the written consent of the City, abandon its cable system or any portion thereof "in such a way as would limit its ability to continue to provide service to all subscribers." The parties are reminded that Public Service Law Section 226 also requires our approval, in addition to the municipality's approval, prior to the company's abandonment of any service or portion thereof. Further, the quoted language is inconsistent with Public Service Law Section 226 and Section 895.1(h) of our rules insofar as it would restrict the Commission and the municipality from the exercise of their authority to review and determine whether it will approve a request to abandon a portion of the company's cable system. Therefore, our approval will be expressly conditioned upon striking the quoted language from the agreement.

Third, Section 2(e) 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.

Fourth, Section 19(b) of the agreement states in part: "The parties hereby acknowledge and agree that any provision of this Franchise or any existing or future State or local laws or rules that are inconsistent with or contrary to any applicable Federal law, including the Cable Act, as the same may be amended, are and shall be prohibited, preempted and/or superseded to the extent of any inconsistency or conflict with any applicable Federal laws." This provision may interfere with the roles of State and local governments in maintaining jurisdictional consistency and in resolving inconsistencies and disagreements in this area. The provision is void and our approval of the franchise is conditioned upon striking the quoted language from the agreement.

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.

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 Cable LLC d/b/a Time Warner Cable for renewal of its cable television franchise for the City of Port Jervis (Orange 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 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