

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on September 17, 2008

COMMISSIONERS PRESENT:

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

CASE 06-V-1210 – Application of Time Warner Entertainment-Advance Newhouse Partnership (Albany Division) for Approval of the Renewal of its Cable Television Franchise for the Town of Fort Edward (Washington County).

ORDER APPROVING RENEWAL

(Issued and Effective October 1, 2008)

BY THE COMMISSION:

The above-captioned application was submitted by Time Warner Entertainment-Advance Newhouse Partnership (Albany Division) on May 15, 2008. A copy of the same was served on the Town of Fort Edward 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 Fort Edward by Resolution of the Town Board dated January 31, 2007 after a duly

noticed public hearing held on January 22, 2007. The term of the renewal is for 10 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, this order will be granted upon condition that the franchisee comply with the minimum standards for public, educational and governmental (PEG) access contained in Section 895.1(f) and 895.4 thereof.

Second, Section 2(c) 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.

Third, as proposed, Section 2(d) 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 company'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, Section 18 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 is resolving inconsistencies and disagreements in this area. The provision is void and our approval of the franchise conditioned upon striking the quoted language from the agreement.

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 Town of Fort Edward (Albany County) is hereby approved, subject to the conditions set forth herein. The term of the renewal is for 10 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. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary