

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on August 29, 2001

COMMISSIONERS PRESENT:

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

CASE 01-V-0808 - Application of Time Warner Entertainment-  
Advance/Newhouse Partnership d/b/a Time Warner  
Cable for approval of the renewal of its cable  
television franchise for the Village of Panama  
(Chautauqua County).

ORDER APPROVING RENEWAL

(Issued and Effective October 19, 2001)

BY THE COMMISSION:

The above-captioned application was submitted by Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable on June 15, 2001. A copy of the same was served on the Village 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 authorized by the Village of Panama by resolution of the Village Board dated March 13, 2001 after a duly noticed public hearing held on the same date. The term of the renewal is ten years measured from April 13, 2001, which is the date both parties signed this agreement.

The renewal agreement substantially complies with Section 595.1 of the Commission's rules at 9 NYCRR, except as noted below.

First, 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 limitation in Section 6(a) to "reasonable" cost and expense is inconsistent with this provision. In this regard, our approval will be expressly conditioned upon striking the quoted language from the agreement.

Second, the definition of gross revenues in Section 1(I) of the agreement which defines gross revenues as "all revenues net of franchise fees," is not consistent with our rules. Section 595.1(o) of our rules require that the revenue base not be less than the revenues received directly from subscribers for any cable services purchased on a regular, recurring monthly basis. Therefore, our approval will be expressly conditioned upon striking from the agreement "net of franchise fees" in Section 1(I).

Third, Section 11(b) of the renewal agreement states that the company will abide by the Commission's line extension rules, "provided that company is economically and otherwise reasonably capable of compliance with such request." In the absence of any purported justification for conditioning the application of the minimum standards for line extension in

Section 595.5 of our rules, our approval will be expressly conditioned upon striking the quoted language from the agreement.

Fourth, Section 11(c) of the agreement permits the company to discontinue a buildout for an area should certain conditions prevail. The parties are reminded that they are bound to comply with Section 595.5 of our rules. Should the company determine, however, that it desires to discontinue the buildout, we wish to make clear that the company must first seek a waiver of the rules. Section 595.5(d) permits a waiver of the line extension rules "if the Commission determines that compliance with the section would not be possible within the limitations of economic feasibility." Therefore, Commission approval of the waiver of the rules must first be obtained prior to the discontinuance of a buildout.

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 d/b/a Time Warner Cable for renewal of its cable television franchise for the Village of Panama (Chautauqua County) is hereby approved, subject to the conditions set forth

herein. The term of the renewal shall expire ten years from April 13, 2001.

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 order of this Commission.

3. This proceeding is closed.

By the Commission,

(SIGNED)

JANET HAND DEIXLER  
Secretary