



Agenda Date: 6/21/13
Agenda Item: IIIH

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CABLE TELEVISION

IN THE MATTER OF THE PETITION OF TIME)	ORDER GRANTING WAIVER
WARNER ENTERTAINMENT COMPANY, L.P. AND)	OF CONDITION NO. 9
TIME WARNER CABLE NEW YORK CITY, LLC FOR)	
APPROVAL OF THE CONVEYANCE OF PROPERTY)	
AND THE TRANSFER OF CERTIFICATES OF)	
APPROVAL)	DOCKET NO. CM12030252

Parties of Record:

Dennis Linken, Esq., Scarinci & Hollenbeck, LLC, for Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On September 13, 2012, the Board approved Time Warner Entertainment Company, L.P. ("TWE") and Time Warner Cable New York City's, LLC ("TWCNYC") (jointly referred to as "Petitioners") petition for a series of restructuring steps and the transfer of certain Certificates of Approval, pursuant to N.J.S.A. 48:5A-40, N.J.A.C. 14:17-6.10, N.J.S.A. 48:5A-19 and N.J.A.C. 14:17-6.8 ("Board Order"). Under the transaction proposed by Petitioners and subsequently approved by the Board, TWE would undergo an internal restructuring whereby, pursuant to a Restructuring Agreement between Petitioners, TWE would merge with and into Time Warner Cable Enterprises ("TWCE") followed by a transfer of assets from TWCE to TWCNYC, its wholly owned subsidiary, that would include a transfer of the assets of TWE's cable television systems in fourteen (14) municipalities in Bergen and Hudson Counties (the "Bergen System")¹ to TWCNYC (the "Transaction"). These assets would generally include the Franchises, Licenses, Contracts and Leases held in the name of TWCE, TWE or TWCNYC that relate to cable operations.

The Board Order approving the Transaction was subject to fifteen (15) conditions. The ninth condition ("BO-9"), stated that "TWE shall provide, within 90 days of the date of closing, revised Office of Cable Television Forms CATV-1 and CATV-2 that shall reflect all categories of gross revenue, as defined by the applicable statutes, for the period January 1, 2012 through the last day of business for the franchises involved." Form CATV-1 ("CATV-1") is a Statement of Gross

¹ The Bergen System serves the following municipalities: Cliffside Park, Edgewater, Englewood, Englewood Cliffs, Fairview, Fort Lee, Leonia, Little Ferry, Moonachie, Palisades Park, Ridgefield, Ridgefield Park, and Teterboro in Bergen County, and Guttenberg in Hudson County.

Operating Revenues for the Calendar Year and Form CATV-2 ("CATV-2") is a Gross Revenue Analysis by Municipality that includes amounts paid to each municipality. They are required pursuant to N.J.S.A. 48:5A-34(a) and N.J.S.A. 48:5A-30(a) and (d), respectively.

BO-9 is a required condition when there is a proposed change in the legal operating entity of a New Jersey cable company to establish the predecessor's franchise fee liability for their portion of the calendar year's cable TV operation. Given that the last day of business for TWE was September 30, 2012, the filing period for CATV 1 and CATV 2 would have been January 1, 2012 to September 30, 2012 (the "Interim Period").

On April 2, 2013, Time Warner Cable New York City, LLC d/b/a Time Warner Cable ("TWC") filed letters dated January 25, 2013 and March 28, 2013, seeking a waiver of BO-9 in the Board Order ("Waiver Petition"). In the Waiver Petition, TWC asserts that the Transaction involved intra-company transactions whereby TWC, the successor company, would be (and is) a subsidiary of the same parent company – Time Warner Cable, Inc. – that owned TWE. TWC also asserts that, in this circumstance, there was no change in control and hence no dispute as to the responsibility for franchise fees. TWC further stated that franchise fees to be paid to the municipalities will be paid by the successor franchisee, TWC, and will encompass the entire period from January 1, 2012 through December 31, 2012.

TWC's assertions regarding a lack of change in control are irrelevant to this matter, since the Board approved the Transaction primarily on the basis of transfers of property (i.e. assets) and certificates of approval pursuant to N.J.S.A. 48:5A-40, N.J.A.C. 14:17-6.10, N.J.S.A. 48:5A-19 and N.J.A.C. 14:17-6.8, and not on any "change of control" issue or lack thereof. Therefore, the Board shall examine the Waiver Petition from the point of view of the asset transfer.

Excerpts from the Final Merger Agreement, submitted pursuant to condition number thirteen in the Board Order, and the Transaction's Restructuring Agreement provided by Petitioners, showed the following:

- a. The Final Merger Agreement between TWE and TWCE (pursuant to Section 2.4 of the Restructuring Agreement) stated that "...all debts, liabilities and duties of TWE will become debts, liabilities and duties of TWCE, as the Surviving Entity...".
- b. The Restructuring Agreement states, in part, in Sections 2.12 and 2.12 (f) that the conveyance of the Transferred Assets shall be made "together with all obligations and liabilities relating to such Transferred Cable Assets...".

These excerpts demonstrate that TWC, the successor to TWE, assumed TWE's obligations and liabilities, eliminating the need for BO-9. Indeed, as shown on TWC's CATV-1 and CATV-2, filed on May 31, 2013, TWC paid the franchise fees for the entire 2012 calendar year.

The Board may relax or waive conditions set forth by Board Order for good cause shown. N.J.A.C. 14:17-1.2 (b). Accordingly, having reviewed this matter and the Waiver Petition, the Board **HEREBY FINDS** that the waiver is appropriate under the present circumstances. Therefore, the Board **HEREBY APPROVES** the Petitioner's request for a waiver of BO-9. This Order is subject to the following conditions:

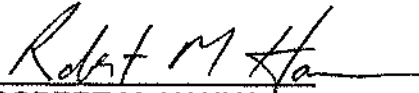
- 1) This Order shall not affect or in any way limit the exercise of the authority of the Board, the Office of Cable Television (OCTV) or the State of New Jersey in any future petition or in any proceeding regarding rates, cost of service, franchises,

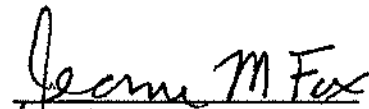
service, financing, accounting, capitalization, depreciation or any other matters affecting the Petitioners.

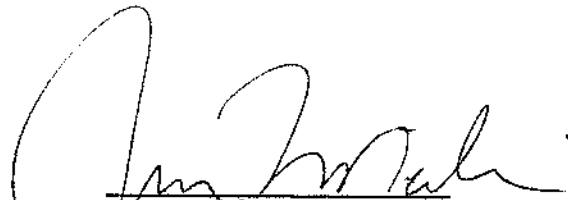
- 2) This Order shall not affect or in any way limit the exercise of the authority of the Board, the Office of Cable Television (OCTV) or the State of New Jersey with respect to the fulfillment of any other Board Order Condition (Condition) in this or any prior matter, or otherwise impact or influence any actual or potential violation of any Condition, Rule of Practice, Regulation or Cable Television Statute, previously, presently or hereafter involving TWC, TWE or its parents, affiliates, subsidiaries or assigns that may now or in the future operate the Time Warner Cable-Bergen system.
- 3) TWC, its parents, affiliates, subsidiaries or assigns that may now or in the future own or operate the Time Warner Cable-Bergen system acknowledge and agree, by way of the statements and assertions made in the Waiver Petition and this Board Order Condition waiver approval, to assume all of the debts, liabilities and obligations now or hereafter owing to the State of New Jersey associated with the Board of Public Utilities pertaining to the operation of the Bergen System by predecessor TWE.

DATED: 6/21/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

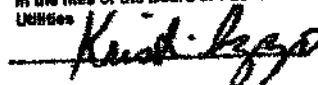

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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AND TIME WARNER CABLE NEW YORK CITY, LLC FOR APPROVAL OF THE
CONVEYANCE OF PROPERTY AND THE TRANSFER OF CERTIFICATES OF APPROVAL
DOCKET NO. CM12030252

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