

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	
	)	
Time Warner Cable	)	CUID No. NY1254 (Town of Lyons)
	)	
Petition for Reconsideration	)	
and Refund Plan	)	

**ORDER ON RECONSIDERATION
AND REFUND PLAN ORDER**

Adopted: March 4, 2002**Released: March 5, 2002**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration of a rate order concerning the January 1, 1998 rate increase of the above-referenced operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. On September 21, 1998, we issued a rate order resolving a complaint concerning Operator's January 1, 1998 CPST rate increase ("Prior Order").¹ On October 21, 1998, Operator filed a petition for reconsideration of our Prior Order ("Petition"). Operator also filed a refund plan ("Refund Plan"). This Order addresses Operator's Petition and its Refund Plan.

2. Under the Communications Act,² at the time the referenced complaint was filed, the Federal Communications Commission ("Commission") was authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Telecommunications Act of 1996 ("1996 Act")³ and our rules implementing the legislation ("Interim Rules"),⁴ required that a complaint against the CPST rate be filed with the Commission by a local franchising authority ("LFA") that has received more than one subscriber complaint.⁵ The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁶ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁷ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any

¹ See In the Matter of Time Warner Cable, DA 98-1883, 13 FCC Red 19634 (1998).

² Communications Act, Section 623(c), *as amended*, 47 U.S.C. § 543(c) (1996).

³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Red 5937 (1996).

⁵ See Communications Act, Section 623(c), *as amended*, 47 U.S.C. § 543(c) (1996).

⁶ See Section 76.956 of the Commission's Rules, 47 C.F.R. § 76.956.

refund liability.⁸

3. In our Prior Order, we found Operator's actual CPST rate to be unreasonable, effective January 1, 1998. In its Petition, Operator raises a single issue. Operator asserts that it should not have to initiate any refunds until its appeal of our Uniform Rates Order⁹ is resolved. Operator's application for review of the Uniform Rates Order was denied on August 16, 1999.¹⁰ Therefore we will dismiss Operator's Petition, which is now moot.

4. Upon review of Operator's Refund Plan filed pursuant to our Prior Order, we find that the Refund Plan fulfills the requirements of our Prior Order, provided Operator calculates its refund liability plus franchise fees through December 31, 1998 and accrues refund interest up to the date of the refund.

5. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's petition for reconsideration IS DISMISSED.

6. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that In the Matter of Time Warner Cable, DA 98-1883, 13 FCC Rcd 19634 (1998), IS AFFIRMED.

7. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. § 0.321 and § 76.962, that Operator's Refund Plan IS APPROVED, provided Operator modifies its refund plan to the extent indicated herein, and that Operator implement its refund plan within 60 days of the date of this Order.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. § 0.321 and § 76.962, that Operator file a certificate of compliance with the Chief, Cable Services Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

⁷ *Id.*

⁸ See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

⁹ *In Re* Petition of Time Warner Cable, DA 98-1219, 13 FCC Rcd 12185 (1998).

¹⁰ See *In the Matter of* Time Warner Cable, FCC 99-217, 14 FCC Rcd 13760 (1999).