

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

In the Matter of)
)
Time Warner Cable, d/b/a)
Cablevision Industries, Inc.) CUID No. FL0116 (City of Deland)
)
Complaint Regarding)
Cable Programming Service Tier)
Rate Increase)

ORDER

Adopted: June 18, 1996

Released: June 19, 1996

By the Acting Chief, Financial Analysis and Compliance Division, Cable Services Bureau

1. In this Order we consider a complaint against the February 1, 1996 rate increase of Time Warner Cable d/b/a Cablevision Industries, Inc. ("Time Warner")¹ for its cable programming service ("CPS") tier in the City of Deland, CUID No. FL0116. In response to this complaint, Time Warner, pursuant to a *Social Contract*² which was entered into with the Federal Communications Commission (the "Commission") submitted its "Time Warner Annual Form 1240."³ We conclude that, notwithstanding certain adjustments, Time Warner's rate increase is not unreasonable.

2. Under the Communications Act,⁴ the Commission is authorized to review the CPS tier rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. If the Commission finds the rate unreasonable, it shall determine the correct rate and any refund liability.⁵ The Telecommunications Act of 1996⁶ and our rules implementing the

¹ Time Warner acquired the Cablevision Industries of Central Florida, Inc. cable system from Cablevision Industries Inc. ("CVI") in January 1996.

² *Social Contract for Time Warner Cable*, 11 FCC Rcd 2788 (1996). Under the terms of the *Social Contract*, Time Warner may include any cable system acquired from Cablevision Industries Inc. within the provisions of the *Social Contract*. (*Social Contract* at Sec. III.F.6).

³ Because no official form was available for Time Warner to use to implement the rate restructuring starting January 1, 1996 required under the *Social Contract*, the Commission permitted Time Warner to use a modified version of FCC Form 1240 to establish its initial CPS tier rates.

⁴ Communications Act, Section 623(c), as amended, 47 U.S.C. Section 543(c)(3)(1996).

⁵ See 47 U.S.C. Section 543(c)(1993).

new legislation,⁷ require that complaints against the CPS tier rates be filed with the Commission by a franchising authority that has received subscriber complaints. A franchising authority may not file a CPS tier rate complaint unless, within 90 days after such increase becomes effective, it receives subscriber complaints. This standard requires more than one subscriber rate complaint. The provisions under the 1996 Act became effective upon its enactment on February 8, 1996.⁸

3. The City of Deland filed a complaint on March 14, 1996. It has verified that it has received more than one subscriber complaint sufficient to trigger our jurisdiction to review its complaint.⁹ On March 26, 1996, Time Warner filed a response to the complaint asserting that its rate increase complained of is permitted by the terms of the Time Warner *Social Contract*.

4. To justify rates for the period beginning May 15, 1994 through a benchmark or cost of service showing, operators must use the FCC Form 1200 series. Operators are permitted to make changes to their rates on a quarterly basis using FCC Form 1210.¹⁰ Operators may alternatively justify adjustments to their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change. *In the Matter of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Thirteenth Order on Reconsideration ("Thirteenth Reconsideration Order")*.¹¹ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹² If actual and projected costs are different during the rate year a "true-up" mechanism is available to correct estimated costs with actual cost changes.¹³ The "true-up" requires operators to decrease their rates or alternatively permits them to increase their rates to make an adjustment for over or under estimations of these cost changes.¹⁴

⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat.56 (February 8, 1996) ("the 1996 Act").

⁷ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, FCC 96-154 (released April 9, 1996) ("Interim Rules").

⁹ See Communications Act, Section 623 (c), as amended, 47 U.S.C. Section 543(c)(3) (1996).

⁹ See Letter dated March 22, 1996 from Kevin Lewis, Assistant Finance Director, City of Deland, Florida.

¹⁰ 47 C.F.R. § 76.922(b)(6); see also *Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

¹¹ 11 FCC Rcd 388, 391 (1996).

¹² *Id.* 392.

¹³ *Id.*

¹⁴ *Id.*

5. There are no official Commission forms available for use in establishing the initial rate restructuring as required under the *Social Contract*. Therefore, the Commission has allowed Time Warner to use a modified format of FCC Form 1240 (the "Time Warner Form 1240") to reflect the adjustments required under the *Social Contract*.¹⁵ Time Warner asserts that the Time Warner Form 1240 that it filed for the above-captioned community on January 31, 1996 justifies the rate increase that went into effect on February 1, 1996.

6. We have reviewed the Time Warner Form 1240 for the above-captioned community, and have made certain adjustments. These adjustments result in a smaller increase than is calculated by Time Warner. However, since Time Warner's actual increase is lower than the our adjusted increase, we find that Time Warner's rate increase is not unreasonable. The adjustments we made are described below and these adjustments should be taken into account in Time Warner's true-up calculation in its next rate adjustment calculation.

Interest Calculation

7. We have made an adjustment to the Time Warner Annual Form 1240 that reflects the correct methodology to calculate interest, as shown in the January Form 1240.¹⁶ We recognize, however, that the use of the incorrect formula to compute interest has an impact on Time Warner's maximum permitted CPS tier rate. However, even with our correction for interest, Time Warner's current rate is below the maximum permitted rate pursuant to the *Social Contract*.

External Cost Calculation

8. We have made an adjustment to the external cost calculation on Time Warner Annual Form 1240. In calculating the monthly per-subscriber External Cost Segment for the Projected Period, Time Warner incorrectly reflected a 12 month period. However, in this case, the correct period is 11 months because Time Warner used a Projected Period of 11 months beginning February 1, 1996 through December 31, 1996.¹⁷

¹⁵ See *In the Matter of Time Warner Cable*, DA-96-953, released May 28, 1996.

¹⁶ The error in calculating the interest was found only in the Instructions in the December Form 1240 and involved three formulas on pages 19 and 20 of the Instructions. The formulas corrected in the January Form 1240 involved Line H4, option 1; Line H4, option 2; and Line H8.

¹⁷ Pursuant to the *Social Contract*, beginning January 1, 1996, Time Warner may increase the monthly rates for the most highly penetrated CPS tier rates on each of its systems by \$1.00 during each year of the *Social Contract*. (*Social Contract* Sec. III.4.a.) This \$1.00 increase applies to the acquired CVI cable systems. (*Social Contract* Sec. III. F.6.)

9. Upon review of the record herein, we conclude that notwithstanding our adjustments, Time Warner has justified its February 1, 1996 rate increase of \$2.29.¹⁸

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein with respect to the City of Deland, Florida, CUID No. FL0116, against February 1, 1996 CPS tier rate increase charged by Time Warner IS DENIED.

11. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that Time Warner's CPS tier rate increase is not unreasonable.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth W. Beaty
Acting Chief, Financial Analysis and Compliance Division
Cable Services Bureau

¹⁸ This finding is based solely on the representations of Time Warner. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.