



Agenda Date: 8/19/10
Agenda Item: IIIB

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CABLE TELEVISION

IN THE MATTER OF THE NOTIFICATION OF THE)
SEPARATION OF TIME WARNER CABLE, INC., FROM)
TIME WARNER, INC.)
)
) DOCKET NO. CM08060458

Dennis C. Linken, Esq., Stryker, Tams & Dill, Newark, New Jersey for Time Warner Cable, Inc. and Time Warner, Inc.

BY THE BOARD:

On June 12, 2008, Time Warner Cable, Inc. ("TWC") and Time Warner, Inc. ("TWX") (the "Parties") filed a Notification with the Board of Public Utilities ("Board") of a plan to effect a complete separation of TWC from TWX (the "Transaction" or "Spin-Off"). TWC is the parent of Time Warner Entertainment Company, L.P. ("TWE" or "Franchisee"), a Delaware limited partnership, which provides cable television service in fourteen (14) municipalities in Bergen and Hudson County, New Jersey (the "Bergen System").¹

TWC is a publicly traded Delaware corporation, that together with its subsidiaries, is the second-largest cable operator in the U.S., with systems located mainly in five geographic areas— New York State and the New York Metropolitan area (including New York City and New Jersey), the Carolinas, Ohio, southern California (including Los Angeles) and Texas. As of December 31, 2009, TWC served approximately 14.6 million residential and commercial customers. TWX, a Delaware corporation, is a leading media and entertainment company.

TWC, TWX and certain of their subsidiaries including TWE entered into a Separation Agreement on May 20, 2008. At the time, TWX owned approximately 84% of the common stock of TWC (representing a 90.6% voting interest). In accordance with the Separation Agreement, on March 12, 2009, after a series of initial, internal restructuring transactions, TWC paid a special cash dividend aggregating \$10.856 billion to holders of record on March 11, 2009 of TWC's outstanding Class A common stock and Class B common stock (the "Special Dividend"). On the same day, TWC's ultimate separation from TWX (the "Separation") was effected by way of a pro rata stock dividend of all shares of TWC Common Stock held by TWX to holders of record of TWX's common stock (the "Spin-Off Dividend" or the "Distribution"). As

¹The Bergen system serves the following municipalities: Cliffside Park, Edgewater, Englewood, Englewood Cliffs, Fairview, Fort Lee, Leonia, Little Ferry, Moonachie, Palisades Park, Ridgefield, Ridgefield Park, Teterboro and Little Ferry in Bergen County, and Guttenberg in Hudson County. At the time of the Notification, TWFanch-One (TWF) was a 99% wholly-owned subsidiary of TWE and the franchised cable provider for the Bergen System. On December 17, 2009, the Board approved the merger of TWF with and into TWE, with TWE as the surviving entity under Docket No. CM09080719 (TWF/TWE Merger).

a result of the Distribution, TWX relinquished its entire 84% ownership in TWC to TWX's shareholders.

The parties to the Transaction provided responses to Board staff's discovery requests regarding the impact of the Transaction on TWC's New Jersey cable television customers. In addition, the parties submitted a copy of their FCC Application for Franchise Authority Consent to Assignment or *Transfer of Control* (emph. added) of Cable Television Franchise (FCC 394) which contained additional information about the Transaction.²

By letter dated March 5, 2009, Rate Counsel stated that as a result of the separation of the cable operations from TWX, customers will continue to receive cable service from TWC without disruption, and on the same rates, terms and conditions as before the separation. Accordingly, Rate Counsel did not pose any objection to the Transaction and recommended its approval.

The Parties have asserted that Board approval of the Transaction is not required under the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq. As described by the Parties, the Transaction is at the parent level and has no direct effect on the Franchisee. The parties further assert that ultimate control of TWC will rest with the same public shareholders both immediately before and after completion of the Spin-off.

ANALYSIS

The primary elements of N.J.S.A. 48:5A-38 provide as follows: "No CATV company shall combine, merge, or consolidate with, or acquire control of another organization without first obtaining the approval of the Board, which shall be granted only after an investigation and finding that such proposed combination, merger, consolidation, or acquisition is in the public interest." While the Board acknowledges the Parties' assertion that this statute does not apply to this Transaction, the Board will nevertheless conduct its analysis based upon this framework.

Public Interest:

The Parties asserted there would be no adverse impact on the ability of the Franchisee to provide safe, adequate and proper service to its subscribers, even under extraordinary circumstances. They further stated to both the Board and to the FCC that the Transaction will result in a substantial reduction in vertical integration and media concentration by eliminating all vertical relationships between TWX and TWC. In the FCC Order, the FCC agreed with these assertions and concluded that the Transaction is likely to benefit the public interest precisely for this reason. The FCC "made plain its concerns that vertical integration of content providers and cable operators, including concerns that affiliated entities may disfavor competing cable operators with respect to program access and competing programmers with respect to program carriage. . . . Moreover, [TWX] contends that separating the [TWX] media content businesses from the TWC content delivery platform will place both companies in a better position to improve the number and quality of products and services they provide to the public."³ The Board concurs that this separation should allow for increased competition in the video programming marketplace, to the ultimate benefit of customers.

²The application was approved by the FCC on February 11, 2009. See Memorandum Opinion and Order, In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Time Warner, Inc., and its subsidiaries to Time Warner Cable, Inc., and its subsidiaries, MB Docket No. 08-120; WC Docket No. 08-157, 24 FCC Rcd. 879 (rel. February 11, 2009) ("FCC Order").

³FCC Order, ¶ 20.

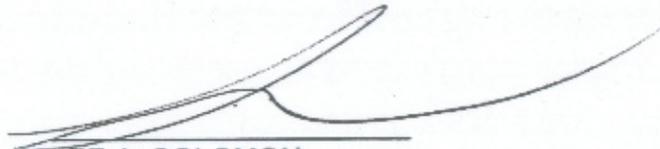
Further, as stated in their Notification, the Spin-off did not affect the ownership interests held by TWC in the Franchisee or any of its other direct or indirect subsidiaries or affiliates, and TWC retained management authority over the Franchisee. In addition, the Notification maintained that the Spin-off did not result in the assignment or transfer of any of the Franchisee's assets, including its municipal consents and Certificates of Approval ("COAs").⁴ Finally, it was further asserted that there would be no change in the local management and staff as a result of the Spin-Off.

Based upon the Board's independent review of the record in this matter in conjunction with a review pursuant to N.J.S.A. 48:5A-38, the Board HEREBY FINDS that, as asserted in the Notification, the transfer of control is not likely to create any adverse impacts, is in the public interest and also has the likelihood of creating the positive benefits of increased quality and number of products and services; and of eliminating vertical integration relationships between TWX and TWC which otherwise had the potential to be anti-competitive.

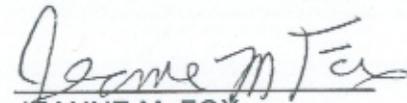
Accordingly, the Board HEREBY FINDS the transaction in compliance with relevant law and regulation and therefore HEREBY APPROVES the Transaction as described in the Notification and related documents.

DATED: 8/18/10

BOARD OF PUBLIC UTILITIES
BY:



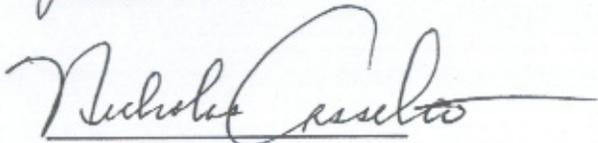
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



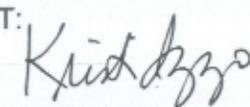
JOSEPH L. FIORDALISO
COMMISSIONER



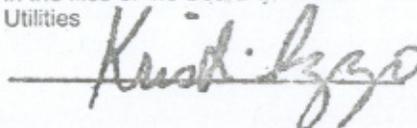
NICHOLAS ASSELTA
COMMISSIONER



ELIZABETH RANDALL
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



⁴However, the Board did authorize the transfer of TWF's COAs for the 14 municipalities in the Bergen System to TWE pursuant to the TWF/TWE Merger (See n. 1 infra).

SERVICE LIST

**I/M/O The Separation of Time Warner Cable, Inc. from Time Warner, Inc. and
Related Financing.**

Docket No. CM09080719

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