



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 FILING BY TIME WARNER)
CABLE - BERGEN COUNTY RATE CHANGE UNDER)
FCC FORM 1205 DETERMINING REGULATED)
EQUIPMENT AND INSTALLATION COSTS)

ORDER

DOCKET NO. CR08121104

(SERVICE LIST ATTACHED)

BY THE BOARD:

The New Jersey Board of Public Utilities ("Board") and its Office of Cable Television ("OCTV"), pursuant to N.J.S.A. 48:5A-1 et seq., have been granted general supervision and regulation of all cable television systems which operate within the State of New Jersey, subject only to the limitations of federal law. Pursuant to this authority, the within matter was opened to the Board upon the filing by Time Warner Cable – Bergen County ("Time Warner"), on December 31, 2008, with revisions on January 16, 2009, of its Federal Communications Commission ("FCC") Form 1205, covering its Bergen New Jersey system.

FCC Form 1205 is a rate form used by cable operators to update their regulated rates for equipment, such as converters and remotes, and customer installations. Under the revised benchmark rules which apply to operators beginning May 15, 1994, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, ("Second Order on Reconsideration"), cable operators are required to justify their rates for cable installations and lease of equipment through an annual filing of a Form 1205 with the franchising authority which, in the State of New Jersey, is the Board.

Under the FCC's Form 1205 methodology, the charges established for equipment leases and customer installations are based on the prior year's actual cost. Equipment rates are derived from the total capital and maintenance costs per unit of equipment, and installation rates are derived from a calculation of an hourly service charge ("HSC") and an application of that charge to different types of installations.

With the passage of the Telecommunications Act of 1996 (the "Act"), cable operators like Time Warner were allowed to aggregate their equipment costs into broad categories, regardless of the varying levels of equipment functionality, on a franchise, system, regional or company level. 47 U.S.C. §543(a)(7)(A). The Act, does, however, limit the ability of cable operators to

aggregate all equipment. Specifically, the Act provides that “[s]uch aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.” Congress specifically directed the FCC to implement this requirement in its rules.¹

In accordance with Congress’ intent, FCC regulations provide that the costs of equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic-only subscribers; such costs, however, may be aggregated in the same manner as other equipment, on a franchise, system, regional or company level.² FCC rules on this issue are clear: the “[c]osts of customer equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic-only subscribers.”³ The rule states that “[t]he prohibition against aggregation applies to subscribers, not the particular type of equipment.”⁴ For companies like Time Warner that elect to aggregate all of their equipment together, the FCC offers an alternative to prevent basic-only subscribers from being overcharged – cable operators may base their basic-only subscriber cost allocation on the assumption that all basic-only subscribers use the lowest level and least expensive model of equipment offered, even if some basic-only subscribers actually have higher-level, more expensive equipment.⁵ In adopting its regulation, the FCC stated “[w]e conclude that Congress intended to ensure that basic-only subscribers not bear the costs of equipment used by subscribers taking services in addition to basic.”⁶ The rule plainly establishes an “either/or” scenario in relation to equipment used by basic-only subscribers: either the cable operator separately aggregates the cost of equipment used by basic-only subscribers and calculates a rate based on that aggregation, or the basic-only subscribers are charged based on the assumption that they use the lowest level, least expensive model of equipment offered by the operator.

In its August 19, 2003 Order, Docket Number CR02100723, the Board stated its belief that the FCC’s intent was clear, and while Time Warner had elected to aggregate its equipment costs on a national level and appeared to not offer a basic-only type converter in its Bergen New Jersey system, it must nevertheless charge its Bergen customers on the basis that all basic-only subscribers use the lowest level and least expensive model of equipment it offered, no matter the equipment actually used. The Board adopted the recommendation of the Administrative Law Judge in the above-referenced matter, and ordered Time Warner to provide a low-cost digital converter to receive the full complement of channels in the basic service tier.

Time Warner appealed the Board’s Order to the FCC in September 2003. To date, the appeal is still pending at the FCC.

Subsequently, in its 2004 Form 1205 filing, Time Warner agreed to offer a Basic-Only Analog Converter for \$1.00, which was subsequently reduced to \$.55 in 2005. In its 2008 Form 1205 filing, a settlement was reached between Staff, Department of the Public Advocate, Division of Rate Counsel (“Rate Counsel”) and Time Warner (collectively, the “Parties”) which provided that Time Warner would offer this analog converter at no charge to any subscriber who requested it.

¹ 47 U.S.C. §543(a) (7) (B)

² 47 C.F.R. §76.923(c)(2)(B)

³ 47 C.F.R. §76.923(c)(2)

⁴ *Id.*

⁵ *Id.*

⁶ *I/M/O Implementation of Section 301 (J) of the Telecommunications Act of 1996*, 11 FCC Rcd 6778, at 23 (1996)

However, when Time Warner filed its 2009 FCC Forms 1240 and 1205 for its Bergen System on October 31, 2008, the Board found that, while the no cost Basic-Only Analog Converter remained, Time Warner had failed to provide a low-cost basic-only digital converter. With the digital transition scheduled in 2009, the importance of the availability of a low-cost digital converter for basic-only subscribers is clearly of vital importance. After several weeks of negotiations with the company concerning the offering of a low-cost basic-only digital converter, the Parties agreed that Time Warner would withdraw its filings in order for the company to have additional time to reach a decision regarding that equipment offering.

On December 31, 2008, Time Warner refiled its Forms 1240 and 1205, with no change to its proposed rates or its decision regarding the offer of a low-cost converter to its basic-only subscribers. Further negotiations between the Parties were not fruitful and, because this issue was fully litigated in 2003, it would serve no purpose to contest it again at the Office of Administrative Law. The Parties' positions have not changed since 2003 and absent a change in rule or law, it is unlikely that a different conclusion would result.

In this filing, as in 2003, the Board contends that Time Warner has frustrated Congress' intent and the requirement of the FCC regulation that sought to prevent subsidization by basic-only subscribers of the costs of more advanced equipment by allocating all equipment costs among available equipment and failing to provide a separate converter rate for basic-only subscribers. In its instant filing, Time Warner has proposed a single rate of \$4.40 for all customer equipment to its subscribers in the Bergen New Jersey system.

Staff reviewed the proposed rates and found them to be reasonable with the exception of the Basic-Only Digital Converter Rate. Staff believes that to charge the same converter rate to a subscriber who merely wishes to receive the full complement of channels on the basic service tier as the subscriber who makes a conscious choice to receive other discretionary and more expensive tiers of service is an unequal distribution of the equipment costs and unreasonably burdensome to the basic-only subscriber, and ultimately a violation of FCC regulations.

On February 27, 2009, pursuant to N.J.A.C. 14:18-3.16, Time Warner filed its tariff with an effective date of April 1, 2009. However, this tariff reflects the Basic-Only Analog Converter Rate at \$.34, effective June 1, 2009, an increase over the present rate of no charge and the proposed operator selected rate ("OSR") on the original and revised Form 1205.

Under the regulations adopted March 30, 1994, 47 C.F.R. § 76.900 et seq., a cable operator may adjust its rates by electing the annual rate adjustment system under the regulations adopted September 15, 1995 (47 C.F.R. § 76.922) by filing a Form 1240 and a Form 1205 on the same date. The reason for the annual filings is to avoid having rates increase more than once a year or during an established "rate cycle".

Time Warner had elected to change its rate cycle from February 1 through January 31 to April 1 through May 31 going forward. Therefore any increase of rates in mid-cycle would cause this rate cycle to be changed again for both the Forms 1240 and 1205.

Since the Form 1240 was settled and the Parties stipulated to the April 1, 2009 through May 31, 2010 rate cycle, Staff believes that the Basic-Only Analog Converter Rate should remain at the proposed rate reflected in both the original and revised Form 1205.

Pursuant to 47 C.F.R. § 76.933(g)2, the Board must issue an Order within twelve (12) months from the date Time Warner filed its form to retain the power to order any refund or prospective rate reduction.

Staff recommended that, because the low-cost converter for basic-only subscribers is an outstanding issue in this instant filing and if Time Warner continues to decline to offer a low-cost basic-only digital converter, all monies collected from the Basic-Only Digital Converter be segregated into a separate interest bearing account for the purpose of potential subscriber refunds until such time that the FCC issues a decision on all the issues before it.

Rate Counsel concurs with Staff's recommendation that the Board should issue an Order accepting the proposed rates with some type of carve-out.

Therefore, based on its review of the findings and recommendations from Staff, the Board, HEREBY ACCEPTS and APPROVES the proposed rates listed on the attached Schedule A, effective April 1, 2009 for the Rate Cycle of April 1, 2009 through March 31, 2010, with the exception of the basic only digital equipment rate.

The Board ORDERS that Time Warner cease and desist any increases to the rates reflected on Schedule A after the April 1, 2009 effective date. However, during this Rate Cycle, if Petitioner chooses to decrease these rates, with proper notice to its subscribers and the Board, the decrease will not affect the time period of the established rate cycle.

In light of the rejection of the Basic-Only Digital Converter rate, the Board HEREBY ORDERS that Time Warner establish an interest bearing escrow account in a financial institution located in the State of New Jersey within thirty (30) days of the date of this Order. All monies collected for the Basic-Only Digital Converter as shown on the attached Schedule A, Proposed Rates, are to be placed into this account on a monthly basis and are to be held for the benefit of Time Warner's basic-only subscribers until such time that the FCC issues its decision. The Board believes that the establishment of the escrow account will help diminish Time Warner's overall liability should the FCC agree with the Board's position on the low cost converter for basic-only subscribers and the other issues outlined in the 2003 Order presently before it.

Time Warner is to submit a certification to the Board's OCTV that it has established the escrow account and include the name and address of the financial institution where the funds are to be deposited within forty-five (45) days of the date of this Order. In addition, Time Warner shall submit copies of the monthly statements for this account reflecting the applicable deposits and present balance of said account to the OCTV within ten (10) days of receipt by Time Warner of the said monthly statement from the applicable financial institution.

In the event that the FCC issues a decision in response to Time Warner's appeal of the Board's Order dated August 13, 2003, Docket Number CR02100723 and in this instant matter, if applicable, indicating that Time Warner must offer a low-cost converter to all basic-only subscribers, Time Warner shall within ninety (90) days of the issuance of the FCC Order, issue a refund of all of the escrowed funds, as well as all other monies due the subscribers of Time Warner, from all other outstanding issues that were part of the 2003 Board Order presently under appeal at the FCC. Time Warner shall make this refund by way of a credit on the subscribers' bills, plus interest in accordance with FCC regulations. Said credit shall be denominated "BPU Refund". Each then existing subscriber shall receive a pro rata portion of said refund. The Escrow Agent shall release the escrow funds to Time Warner to be used as

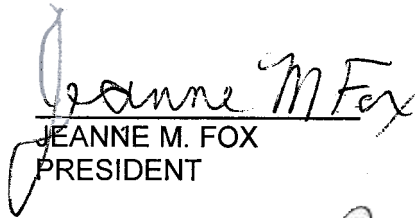
required by this paragraph no later than sixty (60) days after the issuance of the FCC's Memorandum and Order.

The Board FURTHER ORDERS that Time Warner, within ten days of effectuating the refund to its subscribers described in the above paragraph, certify in writing to the OCTV that the refund has been completed.

In the event that the FCC issues a decision indicating that Time Warner may aggregate all its equipment and not offer a low-cost converter to its basic-only subscribers, the escrowed funds shall be released to Time Warner no later than thirty (30) days after issuance of that Order.

DATED: 4/3/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

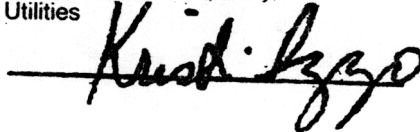

NICHOLAS ASSELTA
COMMISSIONER


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



IN THE MATTER OF
TIME WARNER CABLE – BERGEN COUNTY
FILING OF FCC FORM 1205

DOCKET NUMBER: CR08121104

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SCHEDULE A

<u>EQUIPMENT AND INSTALLATION CHARGES/MONTHLY LEASE RATE</u>	<u>PRESENT</u>	<u>PROPOSED</u>
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STANDARD INSTALLATION RATES:

Unwired Home – first set*	\$40.00	\$40.00
Each additional set at initial install	\$19.00	\$19.00
Prewired Home – first set*	\$30.30	\$30.30
Each additional set at initial install	\$19.00	\$19.00
Reconnect*	\$30.30	\$30.30
Trip Charge**	\$30.30	\$30.30
Addressable Transaction (No Home Trip required)	\$ 1.99	\$ 1.99
Hourly Service Rate	\$37.62	\$37.62

ANCILLARY EQUIPMENT CHARGES:

Basic-Only Analog Converter (per month, per converter)	No Charge	No Charge
Basic-Only Digital Converter (per month, per converter)	\$ 4.40	\$ 4.40
Digital Converter (per month, per converter)	\$ 4.40	\$ 4.40
Digital Video Recorder (DVR) Converter (per month, per converter)	\$ 4.40	\$ 4.40
High Definition (HD) DVR Converter (HD DVR) (per month, per converter)	\$ 4.40	\$ 4.40
Basic Remote Rental (per month, per device)	\$ 0.34	\$ 0.30
Universal DTV Remote (per month, per device)	\$ 0.34	\$ 0.30
CableCARD (per month, per card)	\$ 1.75	\$ 1.75

*Aerial and underground installations include up to 150 feet. Non-standard installations (all aerial and underground drops exceeding 150 feet) and custom installations are billed at the Hourly Service Rate.

**Transactions requiring a separate trip, including but not limited to installation of additional sets, relocations and service upgrades, are subject to this charge.