

**AGENDA
CARRBORO BOARD OF ALDERMEN
TUESDAY, JANUARY 27, 1998
7:30 P.M., TOWN HALL BOARD ROOM**

Approximate Time*

7:30 - 7:40 A. REQUESTS FROM VISITORS AND SPEAKERS FROM THE FLOOR

7:40 - 7:45 B. CONSENT AGENDA

 (1) **Approval of Minutes of Previous Meeting:** January 20, 1998

7:45 - 7:55 C. RESOLUTIONS, PROCLAMATIONS AND CHARGES

 D. OTHER MATTERS

7:55 - 8:55 (1) **Review of Time Warner Cable's Annual Rate Filing**
P/5

On October 1, 1997, Time Warner Cable notified the town that the company would adjust its cable service rates and equipment and installation rates on January 1, 1998. The purpose of this item is to review the 1998 rates and the town consultant's report, accept public comment, and adopt the order which states the town's findings.

8:55 - 9:00 E. MATTERS BY TOWN CLERK

9:00 - 9:10 F. MATTERS BY TOWN MANAGER

9:10 - 9:20 G. MATTERS BY TOWN ATTORNEY

9:20 - 9:30 H. MATTERS BY BOARD MEMBERS

*The times listed on the agenda are intended only as general indications. Citizens are encouraged to arrive at 7:30 p.m. as the Board of Aldermen at times considers items out of the order listed on the agenda.

BOARD OF ALDERMEN

ITEM NO. D(1)

AGENDA ITEM ABSTRACT

MEETING DATE: January 27, 1998

SUBJECT: *REVIEW OF TIME WARNER CABLE'S ANNUAL RATE FILING*

DEPARTMENT: MANAGER'S OFFICE	PUBLIC HEARING: YES _____ NO <u>X</u>
ATTACHMENTS: <ul style="list-style-type: none">■ B. Sepe's Rate Review Report■ Rate Order	FOR INFORMATION CONTACT: Robert Morgan, 968-7706

PURPOSE

On October 1, 1997 Time Warner Cable (TWC) notified the Town that the company would adjust its cable service rates and equipment and installation rates on January 1, 1998. The purpose of this item is to review the 1998 rates and the Town consultant's report, accept public comment, and adopt the order which states the Town's findings.

SUMMARY

The Town has direct regulatory control over the Basic Service Tier, but only an oversight role over the upper tiers (i.e., Tier Service, Standard Service) of cable service. It is the Town's responsibility to verify that the cable operator correctly applied Federal Communications Commission rate making rules when determining BST cable rates. If the Town determines that the cable operator incorrectly applied FCC rate making rules in determining upper tier cable rates, then it may file a formal rate complaint with the FCC, which will trigger an investigation into the rate making process used by the cable operator.

Triangle J Council of Governments Cable TV Consultant, Bob Sepe, has reviewed TWC's 1240 forms on behalf of the Town and determined that the rates should not be increased as requested by Time Warner. The consultant contends that TWC's rate filing relies upon old inflation adjustment information, which if left uncorrected will result in higher cable rates. Bob Sepe will be available to clarify the information in the report if requested by the Board.

If the Mayor and Board issues the attached order it will find that:

- TWC's 1998 BST rates to be unreasonable and set the BST maximum permitted rate at \$8.85 for Carrboro system subscribers and at \$7.59 for Chapel Hill system subscribers; and
- The Town will follow the FCC's rate complaint procedures and challenge TWC's Proposed 1998, FCC 1240 Maximum Permitted Rates for the upper tier services for Carrboro and Chapel Hill systems subscribers.

RECOMMENDATION

Town Administration recommends that the Mayor and Board of Aldermen find that Time Warner Cable's 1998 BST rates to be unreasonable and set the BST maximum permitted rate at \$8.85 for Carrboro system subscribers and at \$7.59 for Chapel Hill system subscribers; and follow the FCC's rate complaint procedures and challenge TWC's Proposed 1998, FCC 1240 Maximum Permitted Rates for the upper tier services for Carrboro and Chapel Hill systems subscribers.


ACTION REQUESTED

To authorize the Mayor to execute the attached rate order.

TIME WARNER CABLE
TOWN OF CARRBORO: NC-0649 and NC-0130
FCC 1240 REVIEW
for 1998

January 22, 1998

REPORT

TO: Robert Morgan, Manager, Town of Carrboro 

FROM: Robert Sepe, Information Access Manager, (TJCOG Consultant/City of Raleigh)

RE: Review of Annual Updating Maximum Permitted Rates filing [FCC 1240],
Time Warner Cable (NC-0649, NC-0130)

Consultants for the Town of Carrboro have reviewed Time Warner Cable's FCC 1240 filing and supporting documentation furnished by the cable operator, and have conducted fact-finding discussions with the cable operator and Federal Communications Commission representatives. The values stated in the filing are the responsibility of the cable operator's management.

Supplied data were reviewed to determine whether the operator calculated "updated" rates consistent with the procedures prescribed by the FCC in accordance with the 13th Order on Reconsideration, the Time Warner Social Contract, and the Telecommunications Act of 1996. Original computations were performed by the consultants and compared against information provided by Time Warner Cable. The consultants believe that the underlying cost data submitted by the cable operator is free of material misstatements. However, the FCC 1240 rate filings submitted to the Town does rely upon old inflation adjustment information, which if left uncorrected will result in higher than normally occurring cable rates. ¹ The accompanying report provides a reasonable basis for the recommendations.

¹ Time Warner may not have the latest inflation adjustment data available at the time it prepared its FCC Form 1240 for 1998.

EXECUTIVE SUMMARY

Time Warner seeks approval from the Town to adjust its *maximum permitted rate(MPR)* Basic Service Tier programming rates for 1998 in the Carrboro/Chapel Hill systems. Those rates are listed in the table below:

System	1997 MPR Basic Rate	Proposed 1998 Basic MPR Rate	Change
Carrboro System NC-0130	\$8.81	\$9.04	\$0.23
Chapel Hill System NC-0649	\$7.63	\$7.74	\$0.11

The Town's consultants have reviewed Time Warner Cable's rate calculations and accompanying information, and recommend that only the *justified maximum permitted* rate for basic service be approved as shown below.

System	1997 MPR Basic Rate	Justifiable Basic MPR Rate	Regulated Rate Change
Carrboro System NC-0130	\$8.81	\$8.85	\$0.04
Chapel Hill System NC-0649	\$7.63	\$7.59	(\$0.04)

Had Time Warner's FCC 1240 rate filings incorporated the true up inflation factor for the second quarter of 1997 released by the Commission on October 10, 1997 the Maximum Permitted BST, CPST and Standard service rates would have been lower. Although the FCC's 1240 rules provide a "true-up" process to rectify over and under charges in subsequent years, it is the consultant's opinion that prudent public policy acts to eliminate potential over charges as opposed to providing "credit" adjustments later.

Time Warner Cable (TWC) is likely to appeal² the Town's rate order to the FCC. In this event, TWC can continue to collect the 'higher' rates until such time that the FCC's Cable Bureau rules on the appeal [likely in August, 1998]. Given the FCC's historical action in matters, the FCC is likely to rule in favor of the Town or remand the issue back to the Town to resolve. Should this occur, the inflation rates shall be known and it will be an easy matter to promulgate new Maximum Permitted Rates for BST, CPST and Standard cable services and issue subscriber refunds.

²The consultant conversed with a TWC representative regarding this matter. No information was provided with respect to the action that TWC might pursue. The Consultant did offer TWC an opportunity to refile its FCC1240 to incorporate the latest inflation values. A decision in this regard by TWC has not yet been forthcoming.

All the information contained in the following report is based upon data provided by the Company. No independent analysis of TWC's system cost data has been undertaken, all figures supplied by TWC, pursuant to TWC's Certification, are accepted as true. The analysis begins by trying to replicate TWC's results. The Consultant has been able to determine that TWC's calculations are mathematically correct. The report constitutes a detailed analyses of the Consultant's filings pursuant to this rate filing.

REPORT

On October 1, 1997, Time Warner Cable notified the Town of Carrboro that the company will adjust its cable service rates and equipment and installation service rates on January 1, 1998. The Town administers two franchises (NC-0649, original Time Warner system served from the Chapel Hill headend; NC-0130, former CVI/Alert system, served from Carrboro headend), each with its separate cable system and subscriber base. It is the Town's responsibility to verify that the cable operator correctly applied Federal Communications Commission rate making rules when determining Basic Service Tier cable rates.

The Town has direct regulatory control over the Basic Service Tier, but has only an oversight role over the upper tiers (i.e., Tier Service, Standard Service) of cable service. However, if the Town determines that the cable operator incorrectly applied FCC rate making rules in determining upper tier cable rates, then it may file a formal rate complaint with the FCC, which will trigger an investigation into the rate making process used by the cable operator.

CHAPEL HILL SYSTEM SUBSCRIBERS NC-0649

If Time Warner's proposed rate structure is adopted, subscribers receiving the **Basic Service Tier (BST)** will see their monthly BST rate increase by **\$0.09**, from **\$7.62** to **\$7.71**, though the maximum permitted rates (MPRs) will increase from **\$7.63** to **\$7.74**. Time Warner has chosen to charge rates below the proposed MPRs.

Tier Service subscribers would see their monthly Tier Service rate increase by **\$1.30**, from **\$7.90** to **\$9.20**, though the maximum permitted rates (MPRs) will increase from **\$8.19** to **\$9.23**. Time Warner has chosen to charge rates below the proposed MPRs.

Current **Standard Service** tier subscribers would see their Standard Service tier rate increase by **\$1.12**, from **\$8.80** to **\$9.92** a month, though the maximum permitted rates (MPRs) will increase from **\$8.82** to **\$9.94**. Time Warner has chosen to charge rates below the proposed MPRs.

*Because of the inflation data discrepancy in Time Warner's FCC 1240 filing for 1998 (see Discrepancies section), the **Maximum Permitted Rate** which can be *justified* for the Basic Service Tier (BST) is **\$7.59**, the Cable Programming Service Tier (CPST) is **\$9.13** and Standard Service is **\$9.77**. Time Warner's BST, CPST and Standard Selected Rates (\$7.71, \$9.20 & \$9.92) are not acceptable in that they exceed the *justified* Maximum Permitted Rate.*

Table A
Rate Overview
NC-0649

Cable Service Tier	1997 Selected TWC Rate	1998 Selected TWC Rate	Proposed 1998 Max Permitted Rate	1998 Justified Selected Rate
BST	\$7.62	\$7.71	\$7.74	\$7.59
CPST	\$7.90	\$9.20	\$9.23	\$9.13
Standard	\$8.80	\$9.92	\$9.94	\$9.77

CARRBORO SYSTEM SUBSCRIBERS
NC-0130

There are only two cable tiers on the former CVI cable system, unlike the Time Warner system that has three tiers of service. If Time Warner's proposed rate structure is adopted, subscribers who receive only the **Basic Service Tier (BST)** will see their proposed monthly BST rate *increase* by \$.37, from \$8.65 to \$9.02. The proposed maximum permitted rates (MPRs) would increase from \$8.81 to \$9.04. Time Warner proposes to charge a rate below the BST-MPR.

Current **Standard Service** tier subscribers will see their Standard Service tier rate increase by \$2.10, from \$18.95 to \$21.05 a month. Though the maximum permitted rates (MPRs) will increase from \$19.30 to \$21.10. Time Warner proposes to charge a rate below the CPST-MPR.

Because of the inflation data discrepancy in Time Warner's FCC 1240 filing for 1998 (see Discrepancies section), the **Maximum Permitted Rate** which can be *justified* for the Basic Service Tier (BST) is \$8.85 and \$20.80 for the Cable Programming Service Tier (CPST). Time Warner's BST and CPST Selected Rates are not acceptable in that they exceed the *justified* Maximum Permitted Rate.

Table B
Rate Overview
NC-0130

Cable Service Tier	1997 Selected TWC Rate	1998 Selected TWC Rate	Proposed 1998 Max Permitted Rate	1998 Justified Selected Rate
BST	\$8.65	\$9.02	\$9.04	\$8.85
CPST	\$18.95	\$21.05	\$21.10	\$20.80

Inflation Adjustment Discrepancy in TWC's FCC 1240 Filing

NC-0649 and NC-0130

Time Warner is claiming inflation adjustments in its true up and projected period segments of its FCC 1240 rate filing. Time Warner used the FCC true up period inflation figure of **2.70%** for the period January through December, 1997. However, on October 1, 1997 the FCC announced that the true-up inflation rate for March through June was **1.77%**. Pursuant to the FCC's rate rules, the company must use the "current" inflation figure when calculating its true-up and projected rate increase due to inflation. When the lower inflation rate was inserted into the rate calculation, the BST and CPST Maximum Permitted Rates dropped.

The consultants recalculated Time Warner Cable's charges attributed to inflation using currently available information³. This resulted in a reduction of the overall inflation for 1997 from **2.7%** to **2.0%** and set the projected period (current) inflation figure to **1.77%**. The projected period inflation figure is subject to correction in the operator's subsequent FCC 1240 rate filing.

Time Warner's FCC 1240 rate filing did not reflect the true up inflation factor for the second quarter of 1997 released by the Commission on October 1, 1997. Had the operator used the 1.77% value to calculate the true-up period inflation rate instead to the previous quarter's value (2.7%), the Maximum Permitted CPST rates would have been lower. Likewise, Time Warner applied the 2.7% rate to its 1998 cost projections which contributed to higher Maximum Permitted CPST rates. Apparently, Time Warner did not have this data available to it at the time it completed its FCC Form 1240 for 1998.

A subscriber's total cable bill amount is inclusive of all tier rates below it. For example, a Standard Service tier subscriber's total monthly rate will include rates for the Basic plus Tier plus Standard Service.

Rate Adjustments for Equipment and Installation Services

Regional FCC 1205

In addition to the rate increases for cable services, Time Warner also adjusted its rates for leased customer equipment and installation services. Pursuant to the Social Contract, Time Warner is allowed to aggregate equipment and installation costs on a regional basis. Time Warner submitted a regional FCC 1205 rate filing directly to the FCC for approval of equipment and installation service rates applicable to multiple franchises across North Carolina. Though the FCC 1205 filing is not submitted directly to relevant franchise authorities, federal rules explicitly state that it is the franchise authority's responsibility to review the rates to ensure their

³See FCC Form 1240 Instructions for Line C3.

compliance with FCC rules.⁴

It is important to examine the rates established in the FCC 1205 filing (and those of other filings) match the rates displayed on subscribers' cable statements. See the following table for equipment and installation service adjustments scheduled for January 1998.

Table C
FCC 1205 Equipment and Installation Rate Adjustments
Effective January 1, 1998

Equipment	1996 Rate	1997 Rate	1998 Rate	Rate Change
Addressable Converter	\$1.96	\$2.10	\$2.30	\$0.20
Non-addressable Converter	\$1.06	\$1.10	\$1.18	\$0.08
Remote Control	\$0.24	\$0.25	\$0.30	\$0.05
Installation - new drop	\$21.90	\$22.28	\$23.45	\$1.17
Reconnect existing drop	\$17.90	\$18.10	\$20.32	\$2.22
Additional Outlet - initial install	\$12.53	\$12.77	\$13.54	\$0.77
Additional Outlet - separate trip	\$16.27	\$16.48	\$17.87	\$1.39
Relocate Outlet - separate trip	\$15.33	\$16.48	\$17.87	\$1.39
VCR Hook Up	\$15.70	\$13.69	\$14.24	\$0.55
A/B Switch Installation	\$15.70	\$13.69	\$14.24	\$0.55
Upgrade - truck trip	\$12.13	\$13.69	\$14.24	\$0.55
Aerial to Underground	\$45.76	\$46.42	NA	NA
Hourly Service Charge	\$22.28	\$23.21	\$24.51	\$1.30

⁴"The local franchising authorities will be responsible for reviewing the rates (equipment and installation services) charged to ensure compliance with the rates approved by the Commission. If Time Warner charges rates in excess of those permitted by the Commission, the local franchising authority may order a refund." Para. 37. Time Warner Cable Social Contract. Memorandum Opinion and Order. DA FCC 95-478. Released: November 30, 1995.

External Costs - Analysis of Cable Service Rate Increases

The cable service rate adjustments reflect multiple **cost elements**, the majority of which are attributed to external costs. An external cost is an expense a cable operator incurs during the normal course of business, and may be added to the rate base. External cost categories include: state and local taxes; franchise fees; costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels; retransmission consent fees and copyright fees incurred for the carriage of broadcast signals; other programming costs; FCC regulatory fees; and costs associated with channel additions and deletions. Time Warner's FCC 1240 rate adjustments reflect the following external cost elements:

- 1) External costs for true up period;
- 2) External costs for projected period;
- 3) Projected cable system upgrade costs (applied to upper cable tier only) - per Social Contract;
- 4) Inflation from true up period; and,
- 5) Inflation for projected period.

True Up and Projected Periods

The FCC 1240 Form must be filed with the local franchise authority 90 days before the rates are scheduled to take effect; it can be filed no more frequently than annually. The FCC 1240 form allows cable operators to adjust their rates but once a year, minimizing the impact on subscribers, and administrative burden on cable operators and franchise authorities.

The FCC 1240 form permits operators to estimate their future costs over a 12-month period: this is referred to as the **projected period**.⁵ The FCC 1240 also allows operators to recover costs that have already occurred during a specified period of time, referred to as the **true up period**. If a cable operator incorrectly estimates its costs for a projected period, it must correct those estimates by using the true up segment of the next FCC 1240 rate filing.

Time Warner's **projected period** for NC-0649 and NC-0130 encompasses the 12 months of 1998, *from January 1 to December 31*. The operator's **true up period** covers 12 months of 1997, *from January 1 to December 31*.

Franchise Related Costs

Time Warner did not include any franchise related costs in its rate base for either the true up periods or projected periods. Franchise related costs are those expenses the operator incurs in the course of fulfilling requirements of the franchise agreement. Such requirements may include, but are not limited to, Public, Education and Government (PEG) access television programming, Local Origination (LO) programming, and Institutional Network expenses.

⁵FCC 1210 Forms allow for the recovery of past costs, only, not future costs. Future costs are recoverable through the use of the FCC 1240 Form, only.

Programming Costs

Chapel Hill System ~ NC-0649

Programming costs for the **BST** during 1998 are projected to be approximately **\$1.036⁶** monthly, per subscriber, a decrease over the prior year. This compares to **\$1.1489** monthly, per subscriber, during 1997. Time Warner representatives state that program service providers customarily change their service fees annually and they reflect costs passed on by program service providers. Time Warner attributes the bulk of its BST programming costs to copyright fees paid to the Copyright Tribunal and fees for carriage of super stations, like WGN. The company did not claim any retransmission consent costs for either period.

Programming costs for the **Tier Service** during 1998 are projected to be approximately **\$4.81** monthly, per subscriber. This compares to **\$3.72** monthly, per subscriber, during 1997. In addition to these programming costs. Added to this cost is the cable system upgrade cost, which amounts to **\$3.00** per subscriber, per month, in 1998. Time Warner is allowed to pass through this cost prior to the rebuild of the cable system, pursuant to the Social Contract between the company and the FCC.

Programming costs for the **Standard Service** during 1998 are projected to be approximately **\$2.78** monthly, per subscriber. This compares to **\$1.98** monthly, per subscriber, during 1997.

Programming Costs

Carrboro System ~ NC-0130

Programming costs for the **BST** during 1998 are projected to be approximately **\$1.1185** monthly, per subscriber. This is less than last year's monthly fee (**\$1.1606**) charged each subscriber. Time Warner representatives state that program service providers generally change service fees each year. The fees are related to the number of channels on the basic tier, the program mix. Time Warner attributes the bulk of its BST programming costs to copyright fees paid to the Copyright Tribunal and fees for carriage of super stations, like WGN. The company did not claim any retransmission consent costs for either period.

Programming costs for the **Standard Service** during 1998 are projected to be approximately **\$7.83** monthly, per subscriber. This compares to **\$5.99** monthly, per subscriber, during 1997. Added to this cost is the cable system upgrade cost, which amounts to **\$3.00** per subscriber, per month, in 1998. Time Warner is allowed to pass through this cost prior to the rebuild of the cable system, pursuant to the Social Contract between the company and the FCC.

⁶Total programming and franchise related costs equal \$1.036 per subscriber, monthly.

Subscribers

Chapel Hill System ~ NC-0649

Time Warner states that its average subscribership during 1997 (the true up period) was **225**. It anticipates approximately **226** average subscribers during 1998 (the projected period), an increase of 1 subscriber. Subscribers receiving "Only" Basic Service in 1997 numbered **28**, and is projected to decrease to **27** during 1998.

The average number of Tier Service only subscribers in 1997 was **8**. This figure will increase to approximately **11** in 1998, as former Tier Service subscribers are folded into the Standard Service tier. The average number of Standard Service subscribers in 1997 was **189**. The company estimates this figure to decrease to approximately **188** in 1998.

Subscribers

Carrboro System ~ NC-0130

Time Warner states that its average subscribership during 1997 (the true up period) was **3,915**. It anticipates approximately **4,067** average subscribers during 1998 (the projected period), an increase of **152** subscribers. Subscribers receiving "Only" Basic Service in 1997 numbered **415**, and is projected to increase to **765** during 1998. The average number of Standard Service subscribers in 1997 was **3,500**. The company estimates this figure to decrease to approximately **3,454** in 1998, reflecting a trend toward basic only subscriptions.

Cable System Upgrade Costs

Pursuant to the Social Contract, Time Warner is allowed to assess each CPST subscriber in 1997 \$2.00 monthly to recover estimated costs associated with a cable system upgrade. This assessment is levied only on the CPST tier and will increase by \$1.00 for each of the five years of the Social Contract. Thus, in the second year of the Contract, the operator will collect \$2.00 per subscriber each month, \$3.00 per subscriber, each month in the third year, etc.

By the end of the Social Contract on December 31, 2000, it is estimated that Time Warner will have collected approximately **\$705,563.06** to fund its rebuild of both cable systems within the Town of Carrboro (see the following Table for estimated annual revenue collected).

Table C
Cable System Upgrade - Both Cable Systems

Projected Precapitalization of System Upgrade
5 Year Social Contract

Year of Contract	Subscribers 2% growth rate	Monthly Charge per Subscriber	Amount To Be Collected
1st year - 1996	3,650	\$1.00	\$43,800.00
2d year - 1997	3,796	\$2.00	\$91,104.00
3d year - 1998	3,872	\$3.00	\$139,389.12
4th year - 1999	3,949	\$4.00	\$189,569.20
5th year - 2000	4,028	\$5.00	\$241,700.73
5 year total	Total amount to be collected for upgrade		\$705,563.06

Social Contract: Upgrade and Capital Commitments

According to Paragraph 25 of the Time Warner Social Contract, Time Warner is obligated to provide "...an average of **15 new analog channels** to benefit CPST subscribers and the initiation of digital distribution technology, which will expand the capacity of Time Warner to add programming and improve picture quality." Time Warner agrees that at least **"...60% of all capital** expended in connection with the upgrade commitment described in the Social Contract will be applied for the benefit of **BST and CPST subscribers."**

Also, Time Warner agrees that "...each cable system will have a minimum bandwidth capacity of 550 MHZ, and at least 50% of Time Warner's subscribers will have access to a minimum bandwidth capacity of 750 MHZ. In the 750 MHZ systems, at least 200 MHZ is expected to be used for digital distribution."

Paragraph 10 of the Social Contract states that Time Warner must provide each franchise affected by the Social Contract with a "...progress report outlining the amount of capital investments made, the number of subscribers affected by those investments, improvements in system reliability and service, and projected expenditure and upgrades for the following year..." within 90 days following the end of the calendar year during which the Social Contract is in effect.

Thus, the Town can expect a report prior to March 31, 1998, from Time Warner stating exactly what the company has accomplished during the past year regarding the system upgrade.

RECOMMENDATION

The consultants recommend:

1. **That** the BST rate adjustments contained within the FCC 1240 filings NC-0130 and NC-0649 submitted by Time Warner Cable be disapproved;
2. **That** the proposed maximum permitted BST rates of **\$7.74** for Chapel Hill System subscribers, and **\$9.04** for Carrboro System subscribers be found **unreasonable**.
3. **That** the Town approve a Maximum Permitted BST rate NC-0649 for the January 1 through December 1998 period not to exceed \$7.59.
4. **That** the Town approve a Maximum Permitted BST rate NC-0130 for the January 1 through December 1998 period not to exceed \$8.85.
5. **That** the Town follow the FCC's rate complaint procedures and *challenge Time Warner Cable's Proposed 1998, FCC 1240 Maximum Permitted Rates for the upper tier services for NC-0649 and NC-0130*;
6. **That** the Town direct Time Warner Cable to amend its 1998 FCC 1240 rate filing for NC-0649 and NC-0130 and resubmit them to the Town; and,
7. **That** the Town request from Time Warner Cable its plan for assigning bill credits, and or, refunds to subscribers.

The consultants recommend, and that the Board find that Time Warner Cable **correctly applied** FCC rate making rules and procedures in calculating the maximum permitted Basic Service Tier rates except that the "true-up" and "projected" inflation values used by the company were not current. Additionally, that the Board encourage Time Warner base subsequent FCC 1240 filings upon inflation update statistics released by the FCC on each October 1 as opposed to submitting its FCC 1240 filing on October 1 each year.

Proceeding

The franchise authority must either approve or deny the operator's BST FCC 1240 rate request, finding the rate to be either reasonable, or not reasonable. This determination must be based upon a finding of fact. The franchise authority should adopt the consultant's report as its own and give the public an opportunity to offer comment on the matter. It is suggested that the public comment period coincide with a regularly scheduled meeting.

A rate order, finding the requested rate to be reasonable and conveying approval, is attached. To be valid, the order must be **executed** following the conclusion of:

- a. a public meeting where the council/commission/board gives interested parties an opportunity to **comment**;
- b. council/commission/board's official **receipt** of the report; and,
- c. **adoption** by the council/commission/board of the report as its own - required by FCC rules (a motion to adopt is necessary).

It is appropriate for public comment to be heard, related to the rate request by the cable operator at the time the council/commission/board meets to deliberate upon this matter. A special session is not required. It is necessary to call public comment during a regularly scheduled public meeting. The comment period should be publicized by issuing a press release to the print and electronic media, included in the meeting's publicized agenda, and otherwise publicly announced in other ways.

STATE OF NORTH CAROLINA TOWN OF CARRBORO

BEFORE THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO

IN THE MATTER OF:

Review of FCC 1240 Annual Basic
Service Tier Rate Adjustment Request
filed by Time Warner Cable/CVI/Alert
for the Town of Carrboro, NC-0649,
and NC-0130

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ORDER FINDING TWC's 1998
PROPOSED \$7.74 and \$9.04 BASIC
SERVICE TIER MAXIMUM
PERMITTED RATES AS
UNREASONABLE AND SETTING
THE BST MPR AT \$7.59 and \$8.85

BY THE BOARD OF ALDERMEN:

WHEREAS, on October 1, 1997, Time Warner Cable submitted two FCC 1240 Annual Maximum Permitted Rate filing requests for Regulated Cable Services with the Town of Carrboro, one for NC-0649, the other for NC-0130. Both filings cover external costs, inflation, and cable system upgrade costs for the projected period of January 1 through December 31, 1998; and above stated costs for the true up period of January 1 through December 31, 1997 for NC-0649;

WHEREAS, Time Warner Cable is permitted, pursuant to the Social Contract, to estimate and recover anticipated inflation, external costs, and cable system upgrade costs for the period of January through December 31, 1998;

WHEREAS, on December 24, 1997, the Town received a report from its consultants stating that Time Warner's FCC 1240 rate calculations are **not in compliance** with Federal Communications Commission rate making rules, and that the requested Maximum Permitted Basic Service Tier rate of \$7.74 for NC-0649 and \$9.04 for NC-0130 are **unreasonable**;

WHEREAS, FCC rules grant local franchise authorities an **initial** 90-day review period, measured from the date of receipt of the FCC 1240 filing by the franchise authority, to review the cable operator's rate filings. If said 90-day review period expires before the rates go into effect, the franchise authority **retains review and refund authority** past the initial 90-day review period as long as all inquiries from the cable operator regarding said review are responded to in writing within 15 days of said inquiry;

WHEREAS, Time Warner's rate filings include cost estimates for the calendar year of 1998, and said estimates may require adjustment (true up) in the cable operator's subsequent FCC 1240 rate filings;

WHEREAS, the Town of Carrboro is certified with the FCC to regulate basic service tier rates, equipment and installation services provided by Time Warner Cable in franchises NC-0649, and NC-0130; and,

IT IS A FINDING:

THAT Time Warner Cable did not structure its 1997 true-up charges for the second through fourth quarter on the FCC's currently available inflation factor of 1.77%;

THAT Time Warner Cable did not structure its 1998 projected charges for the period January through December, 1998 on the FCC's currently available inflation factor of 1.77%;

THAT Time Warner Cable has not substantiated the adjustment of its maximum permitted Basic Service Tier rates based on past inflation and current inflation costs;

THAT, Time Warner has selected to charge the Basic Service Tier rate of **\$7.71** for franchise NC-0649 and **\$9.02** for franchise NC-0130, during the 1998 calendar year in the Town of Carrboro which exceed the **justified** MPRs of **\$7.59** and **\$8.85** respectively; and,

THAT Time Warner Cable has by in large substantiated the other adjustments to its Basic Service Tier rate based on past and estimated cost elements; and

THAT Time Warner's proposed maximum permitted BST rates of **\$7.74** for franchise NC-0649 and **\$9.04** for franchise NC-0130 are determined to be *unreasonable*.

IT IS THEREFORE ORDERED:

THAT Time Warner Cable's Basic Service Tier rates assessed subscribers in franchise NC-0649, Chapel Hill System subscribers, during 1998 shall not exceed the maximum permitted rate of **\$7.59**, and the maximum permitted rate shall not exceed **\$8.85** in franchise NC-0130 during 1998, subject to modifications in subsequent findings by the franchise authority;

THAT the Town retains its authority to issue refunds or rate roll backs after the initial 90-day review period with respect to the rates set out in the FCC 1240 filings, subject to subsequent findings by the franchise authority; and,

THAT Time Warner must keep a full and accurate account of all revenues and costs associated with the aforementioned cable rate adjustments.

THAT Time Warner revise its Form 1240 for the 1997 true-up and 1998 projected periods by applying the correct inflation values described in this Order and file an amended FCC Form 1240 with the Town within thirty (30) days of this Order.

THAT Time Warner is directed to issue refunds or rate roll backs BST rates to the MPRs set by this Order immediately upon the adoption of this Order by the Town.

ISSUED BY ORDER OF THE BOARD OF ALDERMEN

This the 27th day of January, 1998.

ATTEST:

MAYOR:

Deliver Report and Order via Certified U.S. Mail to:
Copy to:

Time Warner Cable
City of Raleigh/TJCOG