

ATTACHMENT A

**A RESOLUTION AUTHORIZING THE TOWN ATTORNEY TO SEND A LETTER
TO TIME WARNER PROVIDING INTERPERTATION OF THE CABLE
ORDINANCE AS IT RELATES TO THE CABLE FRANCHISE
Resolution No. 82/2001-02**

BE IT RESOLVED, By the Carrboro Mayor and Board of Aldermen that the Town Attorney is authorized to send a letter to Time Warner providing the Town's interpretation of the cable ordinance as it relates to the cable franchise with the understanding that Time Warner has thirty days in which to accept the franchise upon receiving the letter from the Town.

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December 17, 2001

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Mr. Mark J. Prak
Brooks, Pierce, McLendon, Humphrey & Leonard, LLC
Suite 1600
150 Fayetteville Street Mall
Raleigh, North Carolina 27602

Re: Chapter 16 of the Carrboro Town Code

Dear Mark:

The purpose of this letter is to clarify the town's interpretation of several sections of Chapter 16 of the Carrboro Town Code, which regulates the cable television franchising process and the operations of cable television franchisees.

By way of a preface, let me reemphasize that Section 16-4 states explicitly that, "[t]o the extent that there is any conflict between the provisions of this chapter and the provisions of any franchise granted pursuant to this chapter, the provisions of the franchise shall be controlling." Be that as it may, the town's responses to the three sections about which you expressed concern are as follows.

First, the town concurs with your view that Subsection 16-38(b) does not authorize the town to require Time Warner to impose monthly charges to support the operating expenses of PEG access channels or other "community media (access) operation[s]," except as agreed upon in the Franchise negotiated by the town and Time Warner. Such an interpretation would be inconsistent with 47 USC § 542. Section 13 of the Franchise deals with "Support for PEG Facilities and Equipment Capital Cost," and those provisions are controlling in any event.

Second, Sections 16-17, "Limited Areas Franchise," and 16-18, "Limited Purpose Franchise" arise out of historical circumstances. As you know, in years past, different cable companies served Carrboro, Chapel Hill, and Orange County. As I recall, Section 16-17 was adopted as an amendment to the original version of Chapter 16 to deal with the situation that occurred when Carrboro annexed an area already served by a cable company that was different than the one franchised to operate within the town generally. Under the ordinance, it was unlawful to operate without a franchise, so these annexed areas posed a special problem that was addressed by the enactment of Section 16-17 (see also Subsection 16-3(b)). Similarly, I believe Section 16-18 was adopted to allow the company operating in Chapel Hill to run lines to serve one or more schools in Carrboro. In any event, these provisions are not intended to allow, and the town does not interpret them to allow, any cable company to come into town and just lay its

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lines in a portion of the town deemed most attractive by that company. I believe this is made explicit by Subsection 16-10(b), which, while recognizing the town's right to grant additional franchises, requires the franchisee to provide service throughout the service area within a reasonable time in a nondiscriminatory manner.

Finally, the town interprets Section 16-37(c) as requiring only that Time Warner have a map showing where its lines are located within the town's streets, and that such map be made available to the town upon request if needed for some town related purpose.

I hope and trust that this letter allays any concerns Time Warner may have had about the foregoing provisions and that this removes the last obstacle to the execution of the Franchise previously approved by the town. Time Warner may rely on the interpretations of Chapter 16 of the Regulatory Ordinance and the proposed Franchise Ordinance set forth herein. The town agrees to be bound by the interpretations of the respective ordinances set forth in this letter and waives any right to argue otherwise in any regulatory, legislative or judicial proceeding or other fora. You have requested that the text of this letter be approved by the Town Board in connection with its vote on the approval of the new Franchise Ordinance with Time Warner. The Town Board has agreed to do so.

Thank you for your cooperation in this matter.

Sincerely,

THE BROUGH LAW FIRM

Michael B. Brough

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