

BOARD OF ALDERMEN

ITEM NO. E(1)

AGENDA ITEM ABSTRACT MEETING DATE: December 3, 2002

TITLE: A Request to Approve the 2002 Time Warner Cable FCC1240 & FCC1205 Rate Order

DEPARTMENT: Manager's Office	PUBLIC HEARING: No
ATTACHMENTS: A. Resolution B. Rate Filing Report C. Letter from Time Warner D. Order	FOR INFORMATION CONTACT: Robert W. Morgan, 918-7315 Bob Sepe, Action Audits – (919) 467-5392 Richard White, 918-7314

PURPOSE

Time Warner Cable of Raleigh-Durham (Time Warner) has submitted FCC1240 Updating Annual Maximum Permitted Rates filings for Regulated Cable Services with the Town. The Cable Television Consumer Protection and Competition Act of 1992, the Federal Telecommunications Act of 1996, the Town Code, and regulations adopted pursuant to that Code, permit the Board of Aldermen to regulate rates for basic cable services and associated equipment. Bob Sepe, a consultant with Action Audits, has reviewed Time Warner Cable's 2002 cable television rate filing. The purposes of this item are to request that the Board 1) receive Mr. Sepe's report; and 2) approve the basic tier rate adjustment and deny the increased hourly service charge.

INFORMATION

Time Warner's filings encompass external costs, inflation rates, and program costs for the period of October 2000 through September 2001 and the projected period of January 2002 through December 2002. Basic service tier (BST) cable television rates were adjusted for inflation and program cost increases. Time Warner calculated the FCC1205 maximum permitted equipment and installation rates by aggregating its costs on a national basis. Hence, the increase in the Hourly Service Charge (HSC) (FCC1205) significantly outpaced the rate of inflation. The prior year costs were aggregated on a state basis.

The FCC allows costs for customer equipment to be aggregated, on a franchise, system, regional, or company level. However, when a company like Time Warner establishes a national filing, it must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable rates.

Time Warner failed to address the relative value of separate regional FCC1205 filings versus a company filing and issues related to cross-subsidy. Because Time Warner is a "super" MSO, it can conceal "cross-subsidies" between divisions where regional economic and geographic cost differences are significant. As a result, high cost areas are being subsidized by communities where costs are lower and installation times quicker. The concept of cross-subsidy resulting from a company FCC1205 filing is important inasmuch as resultant equipment and installation rates are dependent on underlying regional expenses. Any filing lacking such information is incomplete and without merit. Therefore, an accurate assessment cannot be made.

According to the Bureau of Labor Statistics, cable prices rose 4.24 percent compared to a 3.25 percent increase in the Consumer Price Index ("CPI"). The new HSC exceeds inflation by multiple factors. If the HSC were adjusted for inflation, the increase would be less than \$1. Such an increase is reasonable. The HSC proposed by Time Warner does not consider historic rates in North Carolina.

Because, the cable operator did not demonstrate that its averaging methodology produces reasonable rates, Mr. Sepe recommends denying the HSC. This means last year's \$28 rate will remain in effect and not the proposed \$35.84 HSC. The Maximum Permitted Rate was calculated correctly and approval of the BST is recommended.

The Town of Smithfield was the first municipality to decide on the rate adjustments. It followed Mr. Sepe's recommendations to approve the basic service tier adjustment, but deny the increase of the equipment and installation rate. Time Warner filed an appeal with the FCC requesting a reversal of the Smithfield decision and reimbursement for legal expenses associated with the appeal. The FCC may overrule, agree, or remand the rate order back to the local government with instructions to reach a compromise.

Mr. Sepe reviewed his findings with the Cable Television Committee on February 21, 2002. The Committee unanimously approved the basic tier rate adjustment, but denied the increased equipment and installation rate. He recommended that the Carrboro Board of Aldermen delay taking action until the FCC ruling. In addition, Brad Phillips, Time Warner Cable Raleigh-Durham Vice President for Government and Public Affairs, requested that the Town delay taking action until the FCC ruled (Attachment C). A ruling is still pending. However, Mr. Sepe recommends that the Board take action.

FISCAL IMPACT

N/A

RECOMMENDATION

The Administration recommends that the Board 1) receive Mr. Sepe's report on Time Warner Cable's rate filing; and 2) approve the Action Audit recommendations to approve the basic tier rate adjustment and deny the increased hourly service charge.