

ATTACHMENT A

**A RESOLUTION APPROVING THE TIME
WARNER CABLE FCC1240 & FCC1205 RATE FILING FOR 2002
Resolution No. 57/2002-03**

**BE IT RESOLVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE
TOWN OF CARRBORO:**

Section 1. The Board of Aldermen has received the report on the Time Warner Cable FCC1240 & FCC1205 Rate Filing for 2002;

Section 2. The Board of Aldermen hereby approves the basic tier rate adjustment and denies the increased hourly service charge.

Section 3. This resolution shall become effective upon adoption.

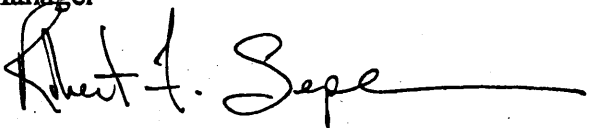
This the 3rd day of December 2002.

Action Audits, LLC

Town of Carrboro, NC-649, NC-0130 Review of Time Warner Cable FCC1240 & FCC1205 Rate Filings for 2002

January 31, 2002

REPORT

TO: Robert Morgan, Town Manager
FROM: Robert Sepe, President 
RE: Review of Time Warner Cable's FCC1240 and 1205 rate filings

We have reviewed Time Warner Cable's FCC1240 and FCC1205 filings, documents gathered by the Town and consulted related FCC rules, regulations and publications. The values stated in the Company's FCC rate requests is the responsibility of the cable operator.

Supplied data were reviewed to determine whether the cable operator calculated "updated" rates consistent with the procedures prescribed by the FCC in accordance with the FCC's 13th Report and Order, and the FCC's Cable Rate Regulation rules §76.900 - §76.990 and the Telecommunications Act of 1996.

Original computations were performed and compared with information provided by Time Warner Cable. The accompanying report provides a reasonable basis for the opinions expressed herein.

SUMMARY

On October 1, 2001, Time Warner Cable submitted a FCC1240-Basic Cable Service Tier and FCC 1205-Equipment and Installation charges to seek an upward adjustment in the rate charged for basic cable television service, installation and equipment rental for the 2002 calendar year. The consultant evaluated the information Time Warner Cable (TWC) submitted, requested and received supplemental information and evaluated the information with respect to conformance to FCC rules. The Consultant performed independent calculations to verify the proposed rate structure sought.

Carrboro is composed of two federally identified cable television districts, NC-0649 and NC-0130. The former encompasses about 360 cable households; the latter has a few more than 4600 cable homes.

- a. NC-0649 TWC subscribers will be charged a "selected" monthly rate of \$10.75 for the Basic Service Tier (BST) in 2002. This rate includes the BST "selected" charge of \$8.94 plus the "Add-on" Cost of Service Network Upgrade Charge of \$1.81, a "selected" monthly combined rate of \$10.75. It is 1-cent (\$.01) less than the \$10.76 Maximum Permitted Combined Rate. The selected rate represents a \$1.85 reduction over the prior year's \$12.60 charge, a 14.7% decrease.
- b. NC-0130 TWC subscribers will be charged a "selected" monthly rate of \$12.40 for the Basic Service Tier (BST) in 2002. This rate includes the BST charge of \$10.95 plus the "Add-on" Cost of Service Network Upgrade Charge of \$1.45, a "selected" monthly combined rate of \$12.40. It is 6-cents less than the \$12.46 Maximum Permitted Combined Rate. This is a \$.40 increase over the prior year's \$12.20 charge, a 2% increase.

The operator's selected "combined" monthly rates for the Basic Service Tier (BST) for 2002 remains below the Maximum Permitted "Combined" Rate for BST cable service. (See Exhibit I, page 4 of the recalculations.)

The next tables document recent shifts in the BST rate.

NC-0649 Basic Rate Adjustments

Year	Selected Rate	+/-	% increase
2000	\$11.10		
2001	\$12.60	\$1.50	13.51%
2002	\$10.75	\$-1.85	-14.68%

NC-0130 Basic Rate Adjustments

Year	Selected Rate	+/-	% increase
2000	\$11.10		
2001	\$12.20	\$1.10	9.91%
2002	\$12.40	\$0.20	1.64%

Inflation Adjustment

In its FCC1240 rate filing, Time Warner used an inflation factor of 3.23% for the last nine months of the 2001 true-up period, because that was the official rate published by the FCC. On October 4, 2001, the FCC revised the official inflation figure for the last two quarters of the 2001 true-up period to 2.25%. Time Warner was not required to include this data in its calculations for the FCC1240 submitted October 1, because the FCC requires cable operators to use the "then current" rate prior to the issuance of revised inflation figures.

Had TWC used the new inflation rates, Time Warner's Maximum Permitted BST rate would have decreased slightly. Refreshment would not significantly alter the rate paid by Time Warner's customers because the "selected" rate is often below the refreshed Maximum Permitted Rate for BST service.

Time Warner was correct to use the 3.23% in the October filing. The Franchise Authority cannot compel the cable operator to submit a revised FCC1240 with a refreshed BST MPR and use that refreshed rate as the basis for preparing the FCC1240 rate filing for 2003. TWC should be encouraged to refresh the 2002 rate in the interest of good business and consumer practices by

decreasing the Maximum Permitted Rate for 2003. Nor would this action create a subscriber refund liability for Time Warner Cable because the operator's Selected Maximum Permitted Rate falls below the "refreshed" MPR for BST cable service permitted pursuant to the FCC's rate-making rules.

Equipment & Installation Rates

Time Warner calculated the FCC1205 maximum permitted equipment¹ and installation² rates by aggregating its costs on a national basis. The prior year costs were aggregated on a regional basis.³

In 2001, Time Warner's North Carolina maximum installation Hourly Service Charge, (HSC) was \$28.39. For 2002, Company-wide expense aggregation increased the HSC \$7.44 to \$35.83, a 26% boost.

The Consultant, seeking clarification and justification of the values and aggregation methodology related to the FCC1205, presented questions (see Exhibit II) to TWC. Timely reply comments were supplied by the Company.

FCC §76.923 (c)(3) states, in part, an operator electing to aggregate and average expenses and installation time must provide a general description of the averaging methodology and justify that its averaging methodology produces reasonable rates.

Time Warner stated that:

"... The methodology used is simply the sum of all the individual data is used.
The methodology produces reasonable equipment rates since the actual division

¹§76.923 (c)(1) Costs of customer equipment may be aggregated, on a franchise, system, regional, or company level. When submitting its equipment costs based on average charges, the cable operator must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates.

²§76.923 (c)(3) Installation costs may be aggregated, on a franchise, system, regional, or company level. When submitting its installation costs based on average charges, the cable operator must provide a general description of the averaging methodology employed and a justification that its averaging methodology produces reasonable equipment rates.

³Time Warner is treated as a single company for FCC 1205 rate-making purposes. TWC files a single FCC 1205 throughout the United States with over 3000 local franchise authorities, LFAs, to establish uniform rates for equipment and installation charges.

data is used.⁴

Such justification is unsubstantial. TWC must show that its averaging methodology produces reasonable rates. It is the Consultant's opinion that the FCC1205 form filed by Time Warner should be disallowed until TWC submits specific data and argumentation to justify the implied claims that the company FCC1205 complies with FCC §76.923. Their argument must address the relative value of separate regional FCC1205 filings versus a company filing and issues related to cross-subsidy. High cost areas are being subsidized by communities where costs are lower and installation times quicker.

It is the Consultant's opinion that FCC1205 filings on a regional basis make sense as a component of rate base/rate of return regulation. A single company filing by a "super" MSO can conceal "cross-subsidies" between divisions where regional economic and geographic cost differences are significant. The concept of cross-subsidy resulting from a company FCC1205 filing is consequential inasmuch as resultant equipment and installation rates are dependent on underlying regional expenses.

Approving Time Warner's Company FCC1205 filing with its proposed \$35.84 HSC will result in North Carolina cable customers improperly subsidizing TWC's high cost service areas, thus creating an upward rate adjustment for low-cost areas.

TWC offered that:

"...we have elected to use lower install rates than the regulated rates....."
"...average new connection rate .. about \$16 per install."⁵

TWC has elected to establish fees which are less than the maximum permitted rates. Also, TWC periodically discounts installation and equipment fees for promotional and competitive reasons. While voluntarily reductions must be acknowledged but do not constitute a sufficient basis upon which to approve a \$35.84 HSC. In the opinion of the Consultant, approving TWC's \$34.95 selected⁶ HSC rate does not constitute a reasonable compromise.

⁴Paul Baccellieri's December 6, 2001 response to Consultant's question #1, see Exhibit #2.

⁵Paul Baccellieri's December 6, 2001 response to Consultant's question #9, see Exhibit #2.

⁶Paul Baccellieri's December 6, 2001 response to Consultant's question #8, see Exhibit #2.

Recommendation

Find the FCC1240/1235 rate-making forms and proposed rates as true and correct and approved subject the conditions set forth herein.

Find TWC's FCC1205 rate-making form is materially deficient because the Company did not show, as required by FCC §76.923 (c)(1) and FCC §76.923 (c)(3) that its averaging methodology produces reasonable rates. Such information is critical to the rate-making process because of its analytical connection to the ensuing rate(s). Such "justification" would contribute substantially to the consideration of the rate filing, without which cannot be made. It is the cable operator's responsibility to demonstrate that its averaging methodology produces reasonable rates. Time Warner's FCC1205 filing has fallen far short of this mark.

Find the 2002 FCC1205 rate-making form is materially deficient because the Company did not show, as required by FCC §76.923 (c)(1) and FCC §76.923 (c)(3) that its averaging methodology produces reasonable rates. Such information is critical to the rate-making process because of its analytical connection to the ensuing rate(s). Such "justification" would contribute substantially to the consideration of the rate filing, without which cannot be made. It is the cable operator's responsibility to demonstrate that its averaging methodology produces reasonable rates.

Find TWC's proposed \$35.83 HSC and its \$34.95 selected 2002 FCC1205 HSC as unreasonable.

RATE REPORT

Background

In September 1995, the FCC adopted the 13th Report and Order, which, among other things, allowed cable operators to adjust their rates on an annual basis using the FCC1240, taking into consideration past and anticipated future external costs.

The 13th Order requires Time Warner and other cable operators to submit their FCC1240 filings ninety (90) days before the date of rate implementation. During this period, the franchise authority may review the reasonableness of the basic service tier rates and issue an order to either approve or deny the rates. The franchise authority retains refund authority as long as it responds within fifteen (15) days to any inquiries from the cable operator regarding its review of the Company's FCC1240 documents.

The Telecommunications Act of 1996 deregulated the upper tiers of cable television service by taking the Federal Communications Commission out of the cable-regulation business. The theory behind the law was that if competition were allowed to develop in the cable industry through the

free market, the cable industry would be more responsive to consumer needs. The competition Congress envisioned has not materialized, except in a few communities. In most locales, cable operators have a defacto monopoly and appear to be taking advantage of that opportunity to ratchet cable rates upward.

Only recently has competition from an aggressive satellite television industry begun to modulate that upward pressure. In a report to Congress ⁷ on the status of competition in the cable industry, the FCC stated that competition is forcing cable operators to respond by lowering prices or adding channels without raising monthly rates. Yet in that same report, it concluded that cable remained the dominant video-programming provider despite inroads made by the DBS industry. Nevertheless, leading to "cable rates, which are rising faster than inflation. According to the Bureau of Labor Statistics, between June 2000 and June 2001, cable prices rose 4.24 percent compared to a 3.25 percent increase in the Consumer Price Index ("CPI"), which measures general price changes." ⁸

Recent TWC Events

Time Warner Cable lost a bid to acquire AT&T, the largest cable operator in the country and it's 13.7million subscribers. Instead, AT&T accepted Comcast's offer. Upon completion of the merger, Comcast and TWC will become the number one and two cable operators in the world.

The December 10, 2001 issue of Multichannel News reported that AOL-Time Warner CEO Gerald Levin would retire in May 2002.

The January 5, 2002 issue of Bloomberg News reported that Glen Britt (TWC's new CEO) advised investors he favors quadrupling monthly customer bills to \$230 by selling new services to existing subscribers. The key strategy is video-on-demand whereby customers can use their remote control to select and order many of the hundreds of movies in TWC's vast Video On Demand library.

To increase revenues, this past fall, TWC increased the price of "Road Runner" Internet service by \$5 monthly. It rose from \$39.95 to \$44.95 in most markets. "...most Road Runner customers by the end of the year will be paying \$44.95, said Time Warner Cable's vice president of corporate communications, Mike Luftman." ⁹

⁷ EIGHTH ANNUAL REPORT, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming. January 14, 2002, CS Docket No. 01-129.

⁸ Ibid.

⁹ Multichannel News, 10/31/2001.

Time Warner Cable raised its rates by about 5 percent at the beginning of 2001. According to Mike Luftman, the Company will implement another hike in 2002 "in the same ballpark for basic and expanded basic combined"¹⁰."

FCC1240 Regulated BST Rates An Analysis of the proposed Rate Adjustments

Time Warner's FCC1240 rate adjustments reflect the following external cost elements:

- 1) External costs for True-up Period
- 2) External costs for Projected Period
- 3) Inflation from True-up Period
- 4) Inflation for Projected Period
- 5) Franchise related (PEG) expenses
- 6) FCC regulatory cost exclusion treatment

External Costs

Time Warner's Form FCC1240 rate adjustments reflect multiple external cost elements. An external cost is an expense a cable operator incurs during the normal course of business and may be included in rate calculations. External cost categories are 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.

True-Up and Projected Periods

The FCC1240 Form must be filed with the local franchise authority ninety (90) days before the rates are scheduled to take effect and may be filed no more frequently than annually. The FCC Form 1240 rate filing method represents a departure from the quarterly method of updating cable rates, in that it allows cable operators to estimate their future costs over a 12-month period: this is referred to as the projected period.¹¹ The FCC1240 form allows operators to recover prior period expenses, 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 process in the next FCC1240 rate filing.

¹⁰ Multichannel News, 11/26/2001.

¹¹ FCC 1210 Forms allow for the recovery of past costs, only, not future costs. Future costs are recoverable through the use of the FCC1240 Form only.

Time Warner's projected period covers the 12-month period of January 1, 2002 to December 31, 2002. The operator's true-up period covers the 12-month period of October 2000 through September 2001.

Franchise Related Costs: Public Access Television

Time Warner Cable reported no franchise related expenses for 2001. Franchise related costs incurred by the operator may include such expenses as public, government and education access facilities and equipment, signal transportation, headend accommodations as well as Institutional Network related expenses.

Commission Regulatory Fees

The FCC permits cable operators to internalize or externalize the regulatory fee. The fee (~\$.50/year) is collected incrementally (~\$.04/month) from cable television subscribers and remitted to the federal government to compensate the FCC for the cost of operating the Cable Service Bureau. An analysis of TWC cable bills determined that the fee is external to the monthly BST rate.

Programming Costs

Time Warner will collect for the projected period \$1.14 monthly, per subscriber, during 2002 for anticipated BST external costs, most of which is attributable to programming costs. Various cable operators have advised that program service providers customarily increase service fees annually. Time Warner attributes its programming cost changes to what it must pay for each service offered. However, this amount is relatively low compared to upper cable tier service programming costs. Most of the channels on Time Warner's BST are obtained without cost to the company.

Inflation

Time Warner is claiming inflation adjustments for the true-up period of October 2000 through September 2001, and the projected period of January 2001 through December 2001. The company used the 3.23% true-up inflation rate for the last three quarters of the 2000 true-up period, because it was the current FCC published rate published when Time Warner completed its initial FCC1240 form. In October 2001, the FCC released new inflation figures of 2.8% and 2.25% for the period May through September 2001.

Time Warner did not use the revised factors to calculate the FCC1240 submitted October 1, 2001. Pursuant to FCC rules, Time Warner was not required to use this rate. The Company is required to use only the most recently published rate (3.23%). As stated in a recent FCC Order, the FCC "does not find a rate unreasonable solely because more accurate inflation data have become available by the time the FCC or the local franchising authority performs its review of the

rate filing.”¹² Time Warner had the authority to apply the higher inflation figure in its September filing.

The Consultant “refreshed” the inflation factors and determined the maximum permitted BST rates would have been slightly less.

It is in the public interest for Time Warner (prior to submitting in September 2002 its FCC1240 filing for 2003) to amend its 2002 FCC1240 rate filing by “refreshing” the inflation figures to incorporate the more recent published figures. Local governments that choose to regulate cable rates are charged with protecting subscribers from paying unreasonable BST rates, while also providing system operators with a fair return. A local government can compel a cable operator to refresh its inflation adjustments upon submission of an amended FCC1240 prompted by a material defect in the original filing. In the interest of consumer fairness, the Town should request that Time Warner “refresh” the rate filing in 2002 to incorporate updated inflation data, thus adjust the 2002 BST MPR and use that value as the basis to calculate the 2003 BST MPR.

Upper Tier CPST Rate Regulation Expiration

A sunset provision within the Telecommunications Act of 1996 terminated upper cable service tier regulation on March 31, 1999. Since then, the cable operator is allowed to change upper service tier rates at will upon thirty (30) days notice to the franchise authority and subscribers.

FCC1235 Cable System Upgrade Costs

Time Warner Cable submitted in 2000 and 2001 an abbreviated FCC1235 Cost of Service Filing for Cable Network Upgrades for BST services¹³ to establish a Cost of Service rate. This fee is “Added on” to the BST rate. Under the FCC’s rules, cable operators are permitted to recover system upgrade outlays on a tier-by-tier basis. FCC rules allow capital upgrade costs to be

¹²In the Matter of Time Warner Cable, Petition for Reconsideration, CUID No. NC -0065, Town of Clayton (June 4, 1999).

¹³Since 1995, pursuant to the Social Contract, Time Warner collected substantial pre-capitalization upgrade fees amounting to several dollars monthly from CPST subscribers. The FCC has ruled that these funds cannot be applied to off-set that portion of the cable operator’s cost to upgrade the portion of the network used to distribute BST services. Consequently, Time Warner is able to recover from its BST customers only the cost of the network upgrade associated with the distribution of BST cable services.

apportioned among the cable tiers, e.g., BST, cable programming service tier (CPST), new product tiers (NPT), etc.

Time Warner seeks to charge a monthly fee to recover FCC1235 Network Upgrade costs for 2002, an amount APPROVED last year. The charge is added to the BST-Selected rate to create the combined rate subscribers pay. Subscribers will be charged a combined rate which includes the "Add-on" and BST rates.

FCC 1205 Equipment and Installation Rates

Time Warner calculated FCC 1205 maximum permitted equipment and installation rates by aggregating costs on a national basis across approximately 3000 franchises. Time Warner's Company-wide maximum permitted Hourly Service Charge is \$35.84, a \$6.02 climb over last year's \$28.39 HSC, a 26% boost.

A variety of installation services are tied to this rate. The next table lists the differences in the amount of time required to install cable service in 2001 versus 2002, according to Time Warner's FCC 1205 Schedule D. The 2001 installation average installation times represent North Carolina "regional" values where as the 2002 values are Company-wide aggregated measurements.

Schedule D: Average Hours* per Installation

Activity	2001 FCC1205 NC regional	2002 FCC1205 company	Delta +/-	% change
Average Hours per Unwired Home Installation	0.96	1.20	0.24	25.00%
Average Hours per Pre-wired Home Installation	0.84	0.85	0.01	1.19%
Average Hours per Additional Connection at time of Installation	0.55	0.54	-0.01	-1.82%
Average Hours per Additional Connection Requiring Separate Installation	0.73	0.85	0.12	16.44%

*time in hours is expressed as decimal equivalents

Although, Time Warner did offer an explanation¹⁴, it did not provide documentation to support the basis for Total Maintenance Hours (Schedule C(B)), the average time required to wire a home (Schedule D(A)), time required to complete a "pre-wire" (Schedule D(B), extra average time required to install an additional outlet simultaneously with a primary installation (Schedule D(C), average time required to install an additional outlet subsequent to the primary installation (Schedule D(D)), average time to perform a hard disconnection (Schedule D(E), average time to perform a tier change, and the average time to perform an "apartment" installation (Schedule D(F)).

The FCC requires the cable operator to provide documentation to support the aforementioned reported labor rate; as such, these records must be secured by the Town. The Consultant believes the values reported for Time Warner Cable's North Carolina Divisions for 2001 are valid, but the company-wide data reported in the 2002 FC1205 is unsubstantiated.

It is the Consultant's opinion that regional FCC Form 1205 filings make "sense" as a component of rate base/rate of return regulation. A regional filing limits "cross-subsidies" between divisions where regional economic and geographic differences are significant. The concept of cross-subsidy in a company FCC 1205 filing is important because resultant equipment and installation rates are dependent on underlying regional costs.

A subsidy occurs when the reasonable costs associated with a service are not covered by the revenues generated by that service, but are instead covered by revenues generated by one or more other services¹⁵. The operator is cross-subsidizing high cost divisions by using aggregation to distribute costs throughout the Company.

There are two parts to a cross-subsidy test: (1) all services must recover at least their long run incremental costs; and (2) no service can be priced above its stand alone cost which in this case are the costs Time Warner delineated in its regional FCC 1205 filing.

The unintended consequence of the FCC's decision to grant cable companies the ability to consolidate their balance sheets for the purpose of a company filing is the resulting cross-subsidization problem. "Super" MSOs serve diverse geographic and economic regions. When they aggregate their balance sheets to create a single company FCC 1205 filing, costs are shifted from high cost centers to low-cost areas creating rate increases which exceed the CPI.

The Consultant, seeking clarification and justification by TWC of values appearing in the FCC 1205, submitted questions (see Exhibit II) to TWC. The following question was directed to

¹⁴See Exhibit II.

¹⁵FCC 96-490 Accounting Safeguards Under the Telecommunications Act of 1996

TWC,

Q8- "Time Warner has not offered a general description of the aggregation methodology used to consolidate the values appearing in the FCC1205. Neither has it offered any such justification that its methodology produces reasonable equipment and installation rates. Provide written justification to show that the Company's aggregation methodology produces reasonable equipment and installation rates which are free from double expense recovery?"

A8- *"TWC's use of a company wide (i.e. National) aggregation methodology in connection with TWC 1205 produces reasonable equipment rates since the actual TWC divisional data was used. In addition, national aggregation tends to mitigate dramatic equipment rate increases associated with new equipment introduction."*

Granted, Time Warner did provide an explanation of the aggregation process, but declined to present information to demonstrate and justify that its averaging methodology produces reasonable HSC or equipment rates. In the opinion of the Consultant, the FCC1205 filed by Time Warner should be disallowed.

FCC §76.923¹⁶ requires the cable operator to provide a general description of the averaging methodology employed and to justify that its averaging methodology produces reasonable rates. The proposed \$35.84 FCC1205 rate does not appear to satisfy the "reasonableness" test. Reasonable is defined being as neither immoderate nor excessive, but equitable and fair¹⁷. Likewise, the proposed \$34.95 HSC "selected" rate, although 88-cents less than the national rate, fails the reasonableness test as well.

Company-wide aggregation is permissible when the promulgated rate is equitable and reasonable. The proposed rate structure does not consider historic rates in North Carolina and exceeds inflation by multiple factors. Such a rate structure cannot be judged reasonable; it's excessive.

Should the Franchise Authority not exercise control over proposed Equipment and Installation Rates, the 26% boost in the HSC will become the basis upon which customers are charged for new installs, adds, moves and changes.

Approving Time Warner's Company FCC1205 filing for Town cable customers does not serve Town residents because it allows an unjustified upward rate adjustment. Although, TWC discounts installation and equipment fees for promotional and competitive reasons, this is

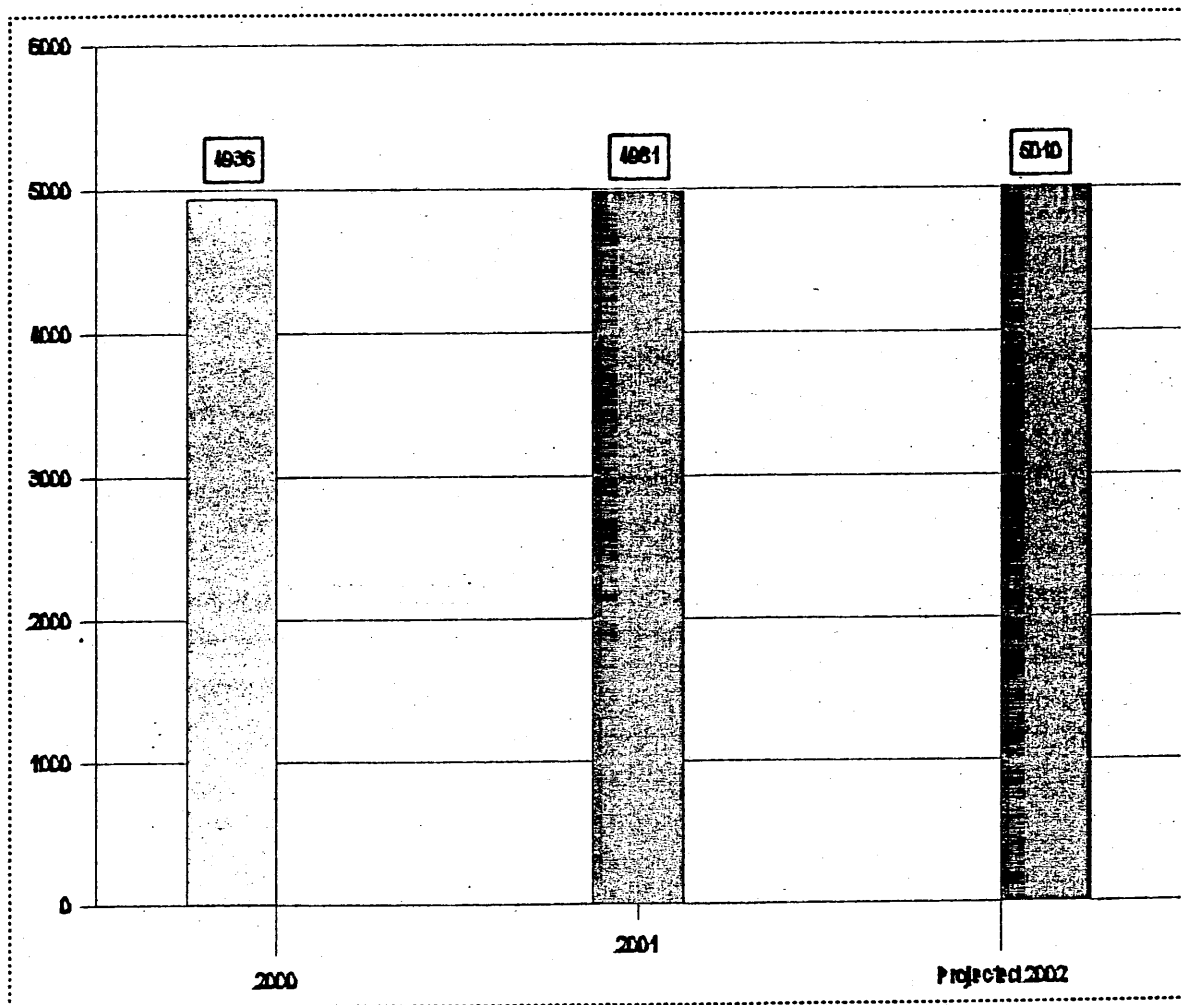
¹⁶FCC §76.923 (c)(3) declares, in part, an operator electing to aggregate and average Company-wide expenses and installation time must provide a general description of the averaging methodology and justify that its averaging methodology produces reasonable rates.

¹⁷Black's Law Dictionary, Sixth Edition.

insufficient reason to approve the proposed Company \$35.84 FCC 1205 rate.

Subscriber Trend for NC-0649/0130

Time Warner believes it will have 5010 subscribers by the end of the Projected Period, an increase of 29 customers. TWC reports it had approximately 4981 customers at the end of the 2001 True-Up Period. In 2000-2001 the Company reported 4977 customers. The data in the chart indicate a mature stable customer base where market share is affected by direct competition with other cable TV providers (satellite or wire-line). In a mature market, price competition overshadows customer growth or loss where the least costly cable service provider attracts the greatest market segment.



Effect of Marketplace Competition

The FCC Cable Services Bureau examined a number of communities where the incumbent cable operator faced head-to-head competition from a single video program provider. Incumbent cable operators responded to the competitive challenge in a number of ways: lowering cable rates, providing additional channels at the same monthly rate, improving customer service, or adding new services, including high speed Internet and telephone services. In the sampled communities, the incumbent cable operator was declared by the FCC to be facing "effective competition," or a petition requesting such a declaration was pending¹⁸. Cable competition offers great benefits to subscribers. In competitive situations, the incumbent cable operator usually responds by improving customer service, offering promotional discounts, lowering or stabilizing cable rates, adding channels and Internet services, and in some cases, offering new digital services.

Recommendation

The Consultant recommends the Town find the:

1. FCC1240 maximum permitted BST rate and the FCC1235 "Add-on" rate applications submitted by Time Warner Cable **as reasonable and approved with conditions.**
 - a. Time Warner should be asked to submit a refreshed 2002 FCC1240 form in September 2002 when it submits its FCC1240 for 2003. The amended FCC1240 should utilize updated FCC inflation figures from the 2001-2002 true-up period, and the projected period. The resulting "refreshed" rate should then be carried forward into calculations in the 2003 FCC1240 filing to prevent future BST maximum rates from being over stated.
2. FCC 1205 Equipment and Installation rate approval request form submitted by Time Warner Cable **as unsubstantiated and denied** because it lacks justification to establish that the aggregation process to prepare a "Company" filing produced just and reasonable and rates.
 - a. Find Time Warner's "selected" \$34.95 HSC as unreasonable.
 - b. Time Warner should be directed to maintain the Equipment and Installation rates established in the 2001 FCC1205 proceeding and develop a subscriber refund

¹⁸ In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Sixth Annual Report, Competitive Responses, pp. 93-101 (January 14, 2000).

mechanism to return any overages resulting from TWC's implementation of 2002 FCC1205 rates.

Proceeding

The franchise authority must either approve or deny the operator's FCC1240 BST, FCC1235 Upgrade "Add-on" charge and FCC1205 Equipment and Installation charges by finding the rates 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 the public must be granted an opportunity to offer comment on the matter. It is suggested that a public comment period on the matter coincide with a regular public meeting.

A rate order, conveying approval is attached. To be valid, the order must be executed following the conclusion of:

- a. a public meeting where the Town grants interested parties an opportunity to comment; and
- b. adoption by the Town of the report as its own - required by FCC rules (this requires a motion to adopt, and a vote).

It is appropriate for public comment to be heard, as related to the various rate issues, at the time the Town Board meets to deliberate this matter. Although a statutory public hearing is not required, it is customary to call for public comment in these matters. The comment period may be publicized by issuing a press release to the print and electronic media or announced in other appropriate ways. The Company must be notified of the public meeting and advised to have a representative present to respond to Town officials, the public and otherwise offer comment.

101 Innovation Avenue
Suite 100
Morrisville, NC 27560
Tel 919-821-7925



February 20, 2002

Mr. Robert Morgan
Town Manager
Town of Carrboro
301 West Main
Carrboro, NC 27510

Dear Mr. Morgan:

As you know, Time Warner Cable submitted to the Town its filing for Basic Service Tier, Equipment and Installation rates back in October of 2001. The Town is scheduled to take up that issue on February 26, 2002 when it hears a report from its consultant, Bob Sepe. We are aware that Mr. Sepe's recommendation is to approve the Basic Tier but deny the Equipment and Installation rate based solely on Mr. Sepe's opinion that the Hourly Service Charge (HSC) is too high. **I am writing to ask the Town to delay action on this issue.**

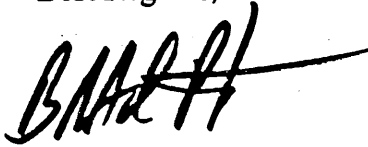
We believe that Mr. Sepe's report is fundamentally wrong and that the above mentioned rates were calculated correctly using the appropriate forms, guidelines and procedures set forth by the Federal Communications Commission (FCC). The law is quite clear. Where the forms were properly completed and there are no mathematical errors, a denial cannot be based solely on the consultant's opinion that the rates are "unreasonable."

On February 5, 2002, the Town of Smithfield approved Mr. Sepe's recommendation and denied the HSC. Time Warner Cable will appeal that action at the FCC. In our appeal we will also ask the FCC to direct the Town to reimburse us for the legal fees that we have incurred in filing this appeal. Quite simply, had the Town and consultant not acted with such blatant disregard of the applicable law no appeal would have been necessary and we would not have incurred these fees. We are confident the FCC will concur with us and remand the matter back to the Town for action consistent with applicable law. I will forward to you a copy of that appeal for your review.

Again, I am asking only that the Town delay taking any action on this issue until the FCC can reach a decision. By delaying action the Town will save both Time Warner Cable and itself the cost of an unnecessary appeal at the FCC.

As always, please call me with any questions or comments, at 919-573-7040.

Best Regards,

A handwritten signature in black ink, appearing to read "BRAD PHILLIPS", with a long horizontal stroke extending to the right.

Brad Phillips
Vice President
Government and Public Affairs

STATE OF NORTH CAROLINA TOWN OF CARRBORO, NC-0649/0130

BEFORE THE TOWN BOARD

IN THE MATTER OF: The Review of FCC1240 Annual Rate Adjustment Request, FCC1235 Abbreviated Cost of Service Rate Request, and FCC1205 Equipment and Installation Rate Request filed by Time Warner Cable)))))))	An Order Finding Time Warner Cable's 2002 FCC1240 Basic Service Tier and FCC1235 Cost of Service Rates Reasonable and Subject to the Conditions Stated Herein. And Finding Time Warner Cable's FCC1205 Equipment and Installation Rates Unreasonable. and Subject to the Conditions Stated Herein.
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WHEREAS, in accordance with the provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Act), the Federal Telecommunications Act of 1996 (1996 Act), the Town Code, and regulations adopted pursuant to that Code, the Town Board is permitted to regulate rates for basic cable services and associated equipment;

WHEREAS, Time Warner Cable of Raleigh-Durham (Time Warner) submitted FCC1240 Updating Annual Maximum Permitted Rates filings for Regulated Cable Services with the Town. Time Warner's filings encompass external costs, inflation, and program costs for the True-up period of October 2000 through September 2001, and the projected period of January 2002 through December 2002;

WHEREAS, the Town received a report from its Consultant stating that Time Warner submitted its FCC1240 before the FCC published its October 2001 updated inflation factors; Time Warner's FCC1240 rate calculations comply with the FCC's rate-making rules;

WHEREAS, it is in the public interest for TWC to voluntarily refresh its 2002 FCC1240 rate prior to completing its next FCC1240 filing in October 2002 for 2003 by incorporating updated inflation figures for 2001 and 2002;

WHEREAS, Time Warner submitted a consolidated "Company" FCC1205 Determining Regulated Equipment and Installation Costs filing with the Town to set the regulated rate for the Hourly Service Charge, Installation Services and Equipment rental rates;

WHEREAS, the Town received a report from its Consultant stating that Time Warner was not able to justify assumptions underlying the Hourly Service Charge (\$35.84);

WHEREAS, the Consultant determined that Time Warner's FCC1205 filing does not comply with FCC rules §76.923 (c)(1) and FCC §76.923 (c)(3) requiring the company FCC1205 methodology to produce just and reasonable rates;

WHEREAS, Time Warner voluntarily selected a \$34.95 HSC rate for its subscribers and not the consolidated "Company" \$35.84 FCC1205 rate and neither rate is reasonable;

WHEREAS, FCC rule 76.933 grants local franchisee authorities an initial ninety (90) day review period, measured from the date of receipt of said filing by the franchise authority, with which to review the cable operator's FCC1240 rate filing. If said ninety (90) day review period expires before the rates go into effect, the franchise authority retains review and refund authority past the initial ninety (90) day review period as long as all inquiries from the cable operator regarding said review are responded to in writing within fifteen (15) days of said inquire;

WHEREAS, on March 1, 2002 Time Warner appealed the Town of Smithfield's FCC 1205 HSC Rate Order to the FCC and subsequently requested the Town delay its Rate Order pending a ruling by the FCC on Time Warner's appeal;

WHEREAS, to date the FCC has not ruled on Time Warner's appeal of the Town of Smithfield's Rate Order;

WHEREAS, the Town received Time Warner's 2003 FCC1205 rate filing and cannot delay implementation of its 2002 Rate Order pending a timely ruling by the FCC in the Smithfield matter; and

WHEREAS, the Town is certified with the FCC to regulate basic service tier rates provided by Time Warner in the Town.

NOW THEREFORE THE TOWN BOARD MAKES THE FOLLOWING FINDINGS:

THAT Time Warner's Combined Maximum Permitted Rate for Basic Tier Service for NC-0649 (\$10.76) is reasonable;

THAT Time Warner's Combined Maximum Permitted Rate for Basic Tier Service for NC-0130 (\$12.46) is reasonable;

THAT Time Warner did not justify the reasonableness of its "Company" \$35.84HSC nor its selected \$34.95 HSC rate;

THAT Time Warner's selected \$34.95 HSC Rate is unreasonable;

THAT Time Warner may charge a Basic Service Tier rate below the approved combined maximum permitted rate;

THAT Time Warner shall not implement its 2002 FCC1205 HSC rate nor its selected \$34.95 HSC rate; and

THAT Time Warner has substantiated the other adjustments to its cable service rates based on past and estimated cost elements; and

IT IS THEREFORE ORDERED:

THAT Time Warner's Combined Maximum Permitted Rates, inclusive of the "Add-On" charge, for Basic Tier Service is reasonable and that Time Warner may charge a combined "selected" BST rate below the approved maximum permitted rates, but not above it;

THAT the maximum permitted Basic Service Tier rate for Time Warner subscribers in The Town for the projected period shall not exceed \$10.76 in NC-0649 nor \$12.46 in NC-0130 per month, subject to subsequent findings by the Board to the contrary;

THAT Time Warner "refresh the inflation rates" in its 2002 FCC1240 filing prior to calculating its 2003 FCC1240 filing by incorporating updated inflation figures for 2001 and 2002;

THAT Time Warner's HSC Rate for Equipment and Installation Service \$35.84 is not reasonable and its selected a \$34.95 HSC is unreasonable and neither shall be come effective;

THAT the Town retains its authority to issue refunds or rate rollbacks after the initial ninety (90) day review period with respect to the restructured rate set out in the FCC1240, FCC1235 and FCC1205 rate filings; and

THAT Time Warner must keep a full and accurate account of all revenues and costs associated with the aforementioned HSC rate adjustments and, upon thirty (30) days notice, submit a refund plan to the Town regarding the distribution of customer refunds pursuant to any overcharges associated with the January 2002 FCC1205 HSC rate implementation; and

THAT this Order shall be effective immediately and an executed original copy provided to Time Warner Cable and copies provided to the public.

ISSUED BY ORDER OF THE CARRBORO TOWN BOARD

This the 3rd day of December 2002.

BY:

Mayor

ATTEST:

Clerk

Deliver Report and Executed Order via Certified U.S. Mail to: Time Warner Cable

Copy to: Action Audits, LLC.