

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-02-TC-068
)	
Time Warner Cable)	CUID No. NC0011 (Greensboro)
)	
Refund Plan)	

ORDER**Adopted: July 16, 2002****Released: July 17, 2002**

By the Chief, Enforcement Bureau:¹

1. In this Order we consider a refund plan filed by the above-referenced operator ("Operator")² pursuant to Order, DA 99-1478³ ("Refund Order").⁴ In the Refund Order, the Cable Services Bureau found Operator to be overcharging \$0.29 per subscriber per month for the period from January 5, 1998 (the date of the filing of the first valid complaint) through December 31, 1998. Our review of Operator's refund plan reveals that the refund plan does not fulfill the requirements of the Refund Order. Rather than calculating its refund liability for 1998, the period reviewed in the Refund Order, Operator submitted an additional FCC Form 1240 covering the period January 1, 1999 through December 31, 1999, which purports to true-up Operator's 1998 refund liability.

2. We have not reviewed the 1999 FCC Form 1240, and there is no pending complaint requiring us to do so. We will not accept FCC Form 1240s filed subsequent to a released order simply to allow an Operator to attempt to true-up refund liability and avoid the payment of refunds.⁵ In addition, the Bureau does not have the resources to review additional filings made subsequent to the release of an order.⁶ Furthermore, the Commission does not have jurisdiction to review the rates for cable programming services provided after March 31, 1999, a period that is within the year covered by Operator's subsequent FCC Form 1240. We cannot assume that Operator calculated its 1999 FCC Form

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² The term "Operator" includes Operator's successors and predecessors in interest.

³ *In the Matter of Time Warner Cable*, DA 99-1478, 14 FCC Rcd 12104 (CSB 1999).

⁴ The Refund Order required Operator to determine the overcharges to cable programming service tier ("CPST") subscribers for the period stated in the Refund Order and file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

⁵ *See, e.g., In the Matter of Cableone*, DA 02-522, 17 FCC Rcd 4300 (CSB 2002).

⁶ Operator was informed by letter that its methodology was unacceptable, but failed to file an appropriate refund plan. *See* letter dated September 22, 1999 to Jack W. Stanley, President, Greensboro Cable Division, Time Warner Cable, from Patrick A. Boateng, Acting Chief, Financial Analysis and Compliance Division, Cable Services Bureau.

1240 accurately. If a review of the additional filing indicated that errors were made in the calculation of the 1999 rate, we would be without jurisdiction to order refunds after March 31, 1999. We therefore reject Operator's refund plan.

3. We calculate Operator's refund liability as follows: For the period from January 5, 1998 through December 31, 1998, we calculate an overcharge of \$0.29 per month per subscriber, in accordance with the Refund Order. Our total calculation, including interest through July 31, 2002 equals \$228,544.00. We order Operator to refund this amount, plus franchise fees and any additional interest accrued from July 31, 2002 to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

4. Accordingly, IT IS ORDERED that Operator's refund plan IS NOT APPROVED.

5. IT IS FURTHER ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$228,544.00, plus franchise fees plus interest accruing from July 31, 2002 to the date of refund, within 60 days of the release of this Order.

6. IT IS FURTHER ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator shall file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

7. This action is taken pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau