

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

In the Matter of	)	
	)	
Time Warner Cable	)	CUID Nos. FL0681 (Apollo Beach)
	)	FL0708 (Ruskin)
	)	FL0709 (Sun City Center)
	)	FL0710 (Riverview)
	)	FL0711 (Gibsonton)
Complaint Regarding	)	
Cable Programming Services Tier	)	
Rate Increase	)	

**ORDER**

**Adopted: July 26, 1996**

**Released: August 5, 1996**

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. In this Order we consider a complaint concerning the February 1, 1996 rate increase of Time Warner Cable ("Time Warner") for its cable programming services tier ("CPST") in the communities referenced above. In response to this complaint, Time Warner submitted its "Time Warner Form 1240."<sup>1</sup> We conclude that Time Warner's rate increase, notwithstanding an adjustment, is not unreasonable.

2. Under the Communications Act,<sup>2</sup> the Federal Communications Commission ("Commission") is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. If the Commission finds the rate unreasonable, it shall determine the correct rate and any refund liability.<sup>3</sup> The Telecommunications Act of 1996<sup>4</sup> and our rules implementing the new legislation<sup>5</sup> require that

<sup>1</sup> Because no official form was available for Time Warner to use to implement the rate restructuring, the Commission permitted Time Warner to use a modified version of FCC Form 1240 to establish its initial CPS tier rates pursuant to the terms of the *Social Contract for Time Warner*, 11 FCC Rcd 2788 (1996) ("*Social Contract*").

<sup>2</sup> Communications Act, Section 623(c), as amended, 47 U.S.C. Section 543(c)(3) (1996).

<sup>3</sup> See 47 U.S.C. Section 543(c) (1993).

<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat.56 (February 8, 1996) ("the 1996 Act").

complaints against the CPST rates be filed with the Commission by a franchising authority that has received subscriber complaints. A franchising authority may not file a CPST rate complaint unless, within 90 days after such increase becomes effective, it receives subscriber complaints. This standard requires more than one subscriber rate complaint. The provisions under the 1996 Act became effective upon its enactment on February 8, 1996.<sup>6</sup> The County of Hillsborough, the local franchising authority, filed a complaint on June 6, 1996 for the communities referenced above. It has verified that it has received more than one subscriber complaint sufficient to trigger our jurisdiction to review its complaint.<sup>7</sup>

3. To justify rates for the period beginning May 15, 1994, through a benchmark filing or a cost of service showing, operators must use the FCC Form 1200 series. Operators are permitted to make changes to their rates on a quarterly basis using FCC Form 1210.<sup>8</sup> Operators may alternatively justify adjustments to their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.<sup>9</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>10</sup> If actual and projected costs are different during the rate year, a "true-up" mechanism is available to correct estimated costs with actual cost changes.<sup>11</sup> The "true-up" requires operators to decrease their rates or alternatively permits them to increase their rates to make an adjustment for over or under estimations of these cost changes.<sup>12</sup>

#### Inflation Calculation

4. We note that the Time Warner Form 1240 filed with respect to the communities in this proceeding use an inflation factor of 2.96%, which is the annual factor for the period July 1, 1994 through June 30, 1995. However, the Time Warner Form 1240 reflects a true-up period

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<sup>5</sup> See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, FCC 96-154 (released April 9, 1996) ("Interim Rules").

<sup>6</sup> See Communications Act, Section 623(c), as amended, 47 U.S.C. Section 543(c)(3) (1996).

<sup>7</sup> See letter dated June 19, 1996 from Frank Turano, Director, Cable Communications Department, Hillsborough County, Florida.

<sup>8</sup> 47 C.F.R. Section 76.922(b)(6); see also *Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

<sup>9</sup> In the Matter of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Thirteenth Order on Reconsideration, 11 FCC Rcd 388, 391 (1996) ("*Thirteenth Reconsideration Order*").

<sup>10</sup> *Id.* at 392.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*



of only six months from July 1, 1995 through December 31, 1995. Thus, Time Warner used an annual inflation factor of 2.96% for a stated "true-up" period of six months.<sup>13</sup>

5. The *Thirteenth Reconsideration Order* provides a "true-up" mechanism which allows operators to correct differences between charges the operator has actually collected and charges which reflect costs actually incurred by the operator.<sup>14</sup> In the instant proceeding, the rates which were deemed reasonable under the *Social Contract* as of August 3, 1995, the starting rate used in the Time Warner Form 1240, did not include allowable inflation from July 1, 1994 to June 30, 1995. Therefore, Time Warner could have properly claimed inflation for such period on the Time Warner Form 1240. Thus, we will permit Time Warner to calculate inflation for the 12 month period (January 1, 1995 to December 31, 1995), as reflected on its filed Time Warner Forms 1240.<sup>15</sup> Therefore, we make no adjustments to Time Warner's inflation factor and permit Time Warner to calculate inflation using the 12 month factor.<sup>16</sup>

#### Interest Calculation

6. We have reviewed the Time Warner Form 1240 submission, and have made an adjustment to the interest calculation. This adjustment results in a different increase than is calculated by Time Warner. However, since Time Warner's actual increase is lower than our adjusted increase, we find that Time Warner's rate increase is not unreasonable. The adjustment we made is described below and should be taken into account in Time Warner's true-up calculation in its next rate increase justification.

7. We have adjusted Time Warner's interest calculation to reflect the correct methodology to calculate interest, as shown in our corrected FCC Form 1240.<sup>17</sup> We recognize that the use of the incorrect formula to compute interest has an impact on Time Warner's maximum permitted CPST rate. However, even with our correction for interest, Time Warner's current rate is below the maximum permitted rate pursuant to the *Social Contract*.

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<sup>13</sup> The Time Warner Form 1240 did not reflect the change to the method for calculating inflation as reflected in the FCC Form 1240 approved on December 15, 1995.

<sup>14</sup> 11 FCC Rcd 388, 392 (1996).

<sup>15</sup> Under the terms of the *Social Contract*, Time Warner's current CPS tier rates as adjusted for inflation and changes in external costs as of August 3, 1995 were deemed reasonable. *Social Contract* at Sec. III. C. 3.

<sup>16</sup> Time Warner, of course, may request inflation for the 6 month period (July 1, 1994 through December 31, 1994) pursuant to our decision in *Thirteenth Reconsideration Order*.

<sup>17</sup> The error in calculating the interest was found only in the Instructions in the FCC Form 1240 approved on December 15, 1995 and involved three formulas on pages 19 and 20 of the Instructions. The formulas corrected on January 19, 1996 in the FCC Form 1240 involved Line H4, option 1; Line H4, option 2; and Line H8.



8. Upon review of the record herein, we conclude that, notwithstanding our adjustment, Time Warner has justified its CPST rate increase of \$2.70.<sup>18</sup>

9. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaint referenced herein with respect to CUID Nos. FL0681, FL0708, FL0709, FL0710 and FL0711 against the CPST rate increase charged by Time Warner in the franchise area referenced in the caption during the period from February 1, 1996 to January 31, 1997 IS DENIED.

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Time Warner's February 1, 1996 CPST rate increase of \$2.70 (plus franchise fee) is not unreasonable.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth W. Beaty  
Chief, Financial Analysis and Compliance Division  
Cable Services Bureau

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<sup>18</sup> This finding is based solely on the representations of Time Warner. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.