



TOWN OF CHAPEL HILL

April 8, 2002

CERTIFIED MAIL –
RETURN RECEIPT REQUESTED
AND FACSIMILE

Mr. Brad Phillips, Vice President
Government and Public Affairs
Time Warner Cable – Raleigh Division
101 Innovation Avenue, Suite 100
Morrisville, NC 27560

Dear Mr. Phillips:

In your March 27, 2002 letter, submitted on behalf of Time Warner, you stated Time Warner's intention to cease the collection and remittance of franchise fees based upon gross revenues derived from the provision of cable modem service. As authority for this action, you cited the FCC's Declaratory Ruling classifying cable modem service as an information service and the FCC's statement regarding franchise fees found in the NPRM. Chapel Hill does not agree that the FCC's decision is final and therefore requires Time Warner to continue the payment of franchise fees based on cable modem services.

The Town of Chapel Hill finds the Time Warner unilateral action to cease collection and payment of franchise fees to be premature and contrary to the terms of the Franchise Agreement Time Warner entered into with the Town. The Town rejects your assertion that the FCC's Declaratory Ruling and Notice of Proposed Rulemaking constitutes adequate and persuasive justification for Time Warner's actions. While Chapel Hill is aware that the FCC provided a tentative conclusion regarding the collection of franchise fees related to cable modem service, the Town maintains that this statement is not part of the Declaratory Ruling. Furthermore, this finding is designated in the NPRM as an issue on which the FCC requested further comments, in accordance with the requirements of due process. Time Warner's action treats the FCC's tentative conclusion in the NPRM as if it carried the full force and effect of law. Such treatment is an over simplification of the rulemaking process and procedures. It is Chapel Hill's position that the requirements of due process should be followed prior to any action being undertaken that is not currently supported by applicable law.

Specifically, the passage referred to by Time Warner is found in the NPRM, not in the Declaratory Ruling. In the same paragraph as the FCC's tentative conclusion regarding franchise fees is its request for "comments on this issues." See, § 105. The FCC's Declaratory Ruling is not tantamount to a federal law prohibition of the assessment of franchise fees on cable modem service. It merely classifies cable modem service as an "interstate service." In your letter, you state Time Warner's actions are proper in light of the FCC's "order." First, the FCC did not

issue an order. It issued a Declaratory Ruling and a NPRM. Second, Time Warner is claiming compliance with a conclusion that has no binding legal authority.


I am hereby giving you notice that the change you announced in your letter of March 27, 2002, may constitute a material breach of the Franchise Agreement. Based upon this, the Town demands correction of that violation within 30 days. Further, the continued collection and remittance of the franchise fees based upon your annual gross revenue, including cable modem services, is required. Chapel Hill also believes that changes in the obligations or terms of the franchise should only be made based on the procedures outlined in the franchise, including in Section 10-115C.

Chapel Hill likewise values its relationship with Time Warner and is open to discussions with Time Warner. Further, in order to account for the regulatory uncertainty and specifically the possible future determination that federal law preempts the imposition of franchise fees on cable modem service revenues, the Town of Chapel Hill will segregate the funds derived from the disputed franchise fees and hold them for possible refund, beginning with the billing cycle you refer to in your letter. The Town hereby requests that you itemize the amounts that constitute franchise fees on cable modem service revenue.

I want to be clear as well on a final point. The purpose of this letter is not to threaten the revocation of a Franchise Agreement. In light of the regulatory uncertainty the Town feels that would be inappropriate. However, the Town's position is that the franchise fees on cable modem service are lawful and that the Town hereby preserves its right to demand full performance of the terms of the franchise, including the collection and payment of all lawful franchise fees. Should Time Warner refuse to collect and pay over the disputed fees, then in the event the fees are not held to be preempted, the Town will hold Time Warner responsible for the uncollected amounts.

If you have any questions or concerns, please let me know.

Sincerely,



W. Calvin Horton
Town Manager

WCH/ah/wms