



**Franchise Agreement
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 63
AGENDA DATE: Thu 09/02/2004
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SUBJECT: Conduct a public hearing and approve an ordinance establishing rates for basic cable service, equipment and installation services for Time Warner Entertainment Advance-Newhouse Partnership (Time Warner).

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Financial and **DIRECTOR'S**
DEPARTMENT: Administrative Services - **AUTHORIZATION:** Vickie Schubert
Telecommunications and
Regulatory Affairs

FOR MORE INFORMATION CONTACT: Rondella Hawkins, Manager, 974-2422

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: To be reviewed by the Council Committee for Telecommunications Infrastructure on August 31, 2004.

The City of Austin is certified by the Federal Communications Commission (FCC) to regulate the rates charged by a cable franchise holder for basic cable services, equipment, (e.g. converter boxes, cable access cards, etc.) and installation services until and unless the FCC determines that "effective competition" to cable services exists in the city. Although Time Warner filed a petition with the FCC to declare Austin subject to "effective competition" in May, 2001, the FCC has not yet ruled on the merits of that claim.

The City Charter requires a public hearing prior to acting on an ordinance regulating the rates, charges and fares of a franchise holder. This item authorizes the City Council to conduct a public hearing on the proposed rate ordinance.

On October 1, 2003, Time Warner filed for a requested maximum permitted rate (MPR) for basic cable service of \$22.08 per month, however, they implemented a lower rate, the new operator selected rate (OSR), of \$10.50 per month on January 1, 2004, a \$1.92 increase from the previous monthly rate of \$8.58. The relevance of the MPR is that it sets a ceiling on the rate that Time Warner could charge for the service. Time Warner also increased their converter box rental from \$6.95 to \$7.99, and new installation service from \$45.86 to \$47.21. On July 1, 2004, Time Warner filed a requested MPR for CableCARDS charge of \$2.02 per month, however, they implemented the OSR of \$1.75.

The City has until October 1, 2004 to make a determination on the reasonableness of the rates. For the CableCARDS filing, the City has until July 1, 2005 to make a determination on the reasonableness of the rates. The City contracted with Fox, Smolen & Associates, Inc. (FSA) to verify the accuracy of the filings and the reasonableness of the rates, consistent with FCC regulations and to provide the City with recommendations concerning the disposition of the proposed rates.



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The FCC established two methods that a cable operator could elect to recover its costs to provide basic cable programming service: the benchmark system (Form 1240) or the cost of service (Form 1220) filing. Time Warner elected the benchmark filing which is a more limited filing than the cost of service that is typically used when cable operators want to attempt to justify initial cable rates above the FCC's reasonable rate standard.

A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment and installation services or a proposed increase in such rates complies with the federal law and the FCC rules.

Rate Review Findings:

The equipment and installation rates (both 1205 filings) were found to be in an acceptable range.

The basic cable service maximum permitted rate (MPR) review is being finalized and late back up with the final findings and recommendations will be provided early in the week of August30, 2004.