

ORDINANCE NO.: 106-2007
INTRODUCED BY: Alexander

AN ORDINANCE APPROVING TIME WARNER'S PROPOSED MAXIMUM PERMITTED AND ACTUAL HOURLY SERVICE CHARGE, EQUIPMENT RENTAL RATES AND CERTAIN RELATED SERVICE AND INSTALLATION RATES AND DISAPPROVING CERTAIN MAXIMUM PERMITTED SERVICE AND INSTALLATION RATES, FOR RATES EFFECTIVE JANUARY 1, 2007 THROUGH DECEMBER 31, 2007; AND DECLARING AN EMERGENCY.

WHEREAS, Time Warner NY Cable LLC ("Time Warner") succeeded to a cable television franchise granted by the City of Richmond Heights (the "City") to Telerama, Inc. on October 15, 2000; and

WHEREAS, in accordance with applicable provisions of the Cable Consumer Protection and Competition Act of 1992, as amended (hereinafter the "Cable Act") and regulations adopted by the Federal Communications Commission (the "FCC"), the City is certified to regulate the basic cable service tier rate and related equipment rental, service and installation rates; and

WHEREAS, pursuant to FCC regulations, on or about October 7, 2006, Time Warner filed with the City its FCC Form 1205 (the "2007 FCC Form 1205") to justify its equipment rental, service and installation rates for the period of January 1, 2007 through December 31, 2007; and

WHEREAS, it was necessary for the City to make certain requests to Time Warner for additional information and clarification in connection with the 2007 FCC Form 1205; and

WHEREAS, contrary to FCC Regulations, Time Warner has repeatedly failed to respond to the City's requests for additional information in a timely manner; and

WHEREAS, under FCC regulations, Time Warner is permitted to calculate its equipment rental, service and installation rates in its FCC Form 1205 using data derived from the national, divisional or franchise level, but must use data derived from the same level in calculating all equipment rental, service and installation rates; and

WHEREAS, in its 2007 FCC Form 1205, Time Warner used national data to calculate its equipment rental rates and hourly service charges (on which service and installation rates are based), but contrary to FCC regulations requiring the use of data from the same level, used service hours averaged at the local Northeast Ohio Division level to calculate its service and installation rates; and

WHEREAS, the City has prepared a revised FCC Form 1205 using national data to calculate service and installation rates in accordance with FCC regulations; and

WHEREAS, interested parties, including Time Warner, were afforded an opportunity to present information to the City regarding these rates; and

WHEREAS, Time Warner's 2007 FCC Form 1205, the Revised 2007 FCC Form 1205, as well as other rate justification information requested of Time Warner and supplied to the City by Time Warner are on file with the Council Clerk and incorporated into this Ordinance by reference.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Richmond Heights, Ohio, that:

Section 1: Based on the information presented at the City Council's meeting to consider this Ordinance, the information submitted by Time Warner, the documents on file with the Council Clerk and the advice of the City's cable television legal consultants, the City makes the below listed findings and orders regarding Time Warner's 2007 FCC Form 1205, the Revised 2007 FCC Form 1205 and Time Warner's proposed Maximum Permitted and Actual Hourly Service Charge, Equipment Rental, Service and Installation Rates:

- (1) Time Warner's proposed **Maximum Permitted Hourly Service Charge** of **\$42.96** for the period January 1, 2007 through December 31, 2007 as calculated in Time Warner's **2007 FCC Form 1205**, and upon which the service and installation rates are based, is calculated in accordance with FCC Regulations and is, therefore, **approved**.
- (2) Time Warner's **Actual Hourly Service Charge** effective January 1, 2007, as set forth in Time Warner's Rate Card is **\$29.95**, and is in accordance with FCC Regulations because it is less than the approved Maximum Permitted Hourly Service Charge and is, therefore, **approved**.
- (3) Time Warner's proposed **Maximum Permitted Equipment Rental, Service and Installation Rates** for the period January 1, 2007 through December 31, 2007 as calculated in Time Warner's **2007 FCC Form 1205** and shown in Table I below are calculated in accordance with FCC Regulations and are, therefore, **approved**.
- (4) Time Warner's **Actual Equipment Rental, Service and Installation Rates** effective January 1, 2007, as set forth in Time Warner's rate card and shown in Table I below, are less than or equal to the approved Maximum Permitted Equipment Rental, Service and Installation Rates and are, therefore, **approved**.

TABLE I

Monthly Equipment Rental Rates – Approved		
	<u>2007 Maximum Permitted Rate</u>	<u>2007 Actual Rate</u>
Remote (Analog and Digital)	\$0.32	
Converters		
Addressable (includes HDTV, DVR and digital converters)	\$7.66	\$7.95 (combined with remote)
Nonaddressable	\$0.25	not offered
CableCard	\$2.73	\$2.50
Monthly Service and Installation Rates – Approved		
	<u>2007 Approved Maximum Permitted Rate</u>	<u>2007 Approved Actual Rate</u>
Underground Install	*	*
Charge for Changing Tiers (no visit)	\$2.00	\$2.00

*an hourly charge of \$29.95 multiplied by the actual time necessary to complete installation, plus materials.

- (5) Time Warner's proposed **Maximum Permitted Service and Installation Rates** for the period January 1, 2007 through December 31, 2007, as calculated in Time Warner's 2007 FCC Form 1205, were calculated using a combination of nationally derived data and data averaged at the local Northeast Ohio division level that is **not** in accordance with FCC Regulations and are, therefore, **disapproved**.
- (6) The corrected **Maximum Permitted Service and Installation Rates** for the period January 1, 2007 through December 31, 2007, as calculated by the City in the Revised 2007 FCC Form 1205 and set forth in Table II below, are calculated in accordance with FCC Regulations and are, therefore, **approved**.
- (7) Time Warner's **Actual Service and Installation Rates**, effective January 1, 2007, as set forth in Time Warner's rate card and shown in Table II below, are less than or equal to the approved Maximum Permitted Service and Installation Rates calculated in the Revised 2007 FCC Form 1205 and are, therefore, **approved**.

TABLE II

Service and Installation Rates			
	<u>Time Warner Proposed 2007 Maximum Permitted Rates (Disapproved)</u>	<u>Revised 2007 Maximum Permitted Rate (Approved)</u>	<u>Time Warner Actual 2007 Rates (Approved)</u>
Install (Unwired Home)	\$47.26	\$50.51	\$44.95
Install (Pre-wired Home)	\$30.07	\$33.74	\$29.95
Additional Outlet (unwired)			
Same Trip	\$25.78	\$22.10	\$19.95
Separate Trip	\$42.96	\$34.06	\$29.95
Non-Pay Reconnect	\$30.07	\$33.74	\$29.95
Relocate Service for Inside Outlet	\$42.96	\$34.06	\$29.95
Transfer Service	\$30.07	\$33.74	\$29.95
Transfer Service (unwired)	\$47.26	\$50.51	\$39.95

Section 2: The City reserves the right to reconsider this Ordinance for the sole purpose of further reducing rates should new information arise which was not disclosed by Time Warner or should modifications or clarifications to FCC rules and regulations so provide and permit. This Ordinance shall not be construed as an approval of any pending request or proposal for a rate adjustment pursuant to FCC Form 1205, 1240 or otherwise.

Section 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees or subcommittees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4: Notice of the passage of this Ordinance shall be given by publishing the title and abstract of contents prepared by the Director of Law once in a newspaper of general circulation in the City of Richmond Heights and the Clerk of Council is hereby directed to serve a certified copy of this Ordinance by certified mail upon Time Warner immediately upon its passage.

Section 5: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Richmond Heights, such emergency being for the reason that in order to protect the City of Richmond Heights' cable television subscribers from excessive rates to the fullest extent permitted by law, it is necessary that the within Ordinance take effect at the earliest time permitted by law. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force

immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED:_____

Daniel J. Ursu, Mayor

APPROVED:_____

ATTEST:_____

Betsy Traben
Clerk of Council

David H. Roche
President of Council