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I. INTRODUCTION

1. Time Warner Cable (Time Warner) and the Federal Communications Commission ("Commission") have negotiated a Social Contract designed to provide upgrade incentives for Time Warner and to provide rate stability and increased quality of service for its consumers. In addition, the Social Contract resolves over 900 rate cases and provides refunds of approximately \$4.7 million plus interest to subscribers. In this Order we approve the Time Warner Social Contract ("Social Contract"), which is attached as Appendix A. The proposed Social Contract was placed on Public Notice and comment periods were established.¹ The Commission received both initial and reply comments.

II. BACKGROUND

2. In the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Congress set as one of its policy goals to ensure that cable operators continue to expand the capacity and programs offered over their systems, where economically viable.² In Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 93-215, Report and Order and Further Notice of Proposed Rulemaking ("*Cost Order*") establishing interim regulations for cost of service filings,³ we adopted an upgrade incentive plan on an experimental basis. We noted that the basic outline of this approach would be "to permit an operator to enter into a social contract with its customers under which the operator would be given substantial flexibility in setting rates for new regulated services it introduces, such as new service tiers offering additional program channels. In exchange, customers would be guaranteed that rates for current services would be kept stable and reasonable, . . . and that this rate would purchase at least the same program channels, or channels of equivalent value to customers. The operator would also commit to otherwise maintaining or improving its service quality. The contract would be effective for a term of years and would be overseen by this Commission, and reviewed before the end of the term." We also noted that this plan "protects the rates and quality of current cable service tiers, while providing profit incentives for operators to introduce new and

¹ See *Public Notice, Social Contract for Time Warner Available for Comment*, FCC 95-336 (released August 3, 1995). Pursuant to the Public Notice, initial comments were to be filed no later than September 5, 1995 and reply comments no later than September 20, 1995. The deadline for filing initial comments was subsequently extended to September 15, 1995 and the deadline for filing reply comments was extended to September 25, 1995. See *Public Notice, Cable Services Bureau Announces Extension of Time To File Comments and Reply Comments on the Social Contract For Time Warner*, DA 95-1875 (released August 28, 1995).

² Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992) § 2(b)(3).

³ 9 FCC Rcd 4527 (1994).

improved regulated services, may help carry out the purposes of the Cable Act while also being fair to customers of current services, less burdensome on cable operators and those responsible for their regulation, and more likely to encourage worthwhile investments to upgrade cable service." We recently have approved such a social contract with Continental Cablevision, Inc. (the "Continental Contract"). The Continental Contract was approved by the Commission in an Order adopted on August 1, 1995.⁴

3. On May 4, 1995, pursuant to special *ex parte* procedures available in certain cable rate proceedings, Time Warner requested relaxed *ex parte* treatment to enable it to discuss broad rate related matters with Commission officials.⁵ The Bureau orally approved this request on May 16, 1995. Consistent with these *ex parte* procedures the Cable Services Bureau ("Bureau") and Time Warner negotiated the terms of the Social Contract. On August 3, 1995, the Commission approved the release of the draft of the Social Contract for public comment.

4. The Commission has reviewed and considered the comments it received in approving the terms and conditions of the Social Contract and making modifications to it.

A. Overview of the Social Contract

5. The Social Contract is for a term of five years. From 1995 through 2000, Time Warner is required to invest \$4 billion to rebuild and upgrade all of its domestic cable systems⁶, including deployment of fiber optic technology, increased channel capacity and improved system reliability and signal quality. At least 60% of all capital expended in connection with the upgrade commitment will be applied for the benefit of basic service tier ("BST") and cable programming service tier ("CPST") subscribers. In addition, at least 60% of the new analog capacity added as a result of the upgrade will be used for traditionally regulated CPSTs, and, on average, traditionally regulated CPSTs on the upgraded systems will have at least 15 additional channels. To fund this investment, Time Warner will be allowed to increase the monthly rate for the most highly penetrated CPST in each system by \$1 during each year of the Social Contract. If Time Warner fails to meet the upgrade commitment

⁴ Social Contract for Continental Cablevision, FCC 95-335 (released August 3, 1995) ("*Continental Contract Order*").

⁵ See Modification of Ex Parte Procedures in Certain Cable Rate Proceeding, 9 FCC Rcd 7812 (1994) ("*Cable Ex Parte Order*").

⁶ The Social Contract provides that, except as otherwise provided in the Social Contract, the Social Contract covers all of Time Warner's systems as of the August 5, 1995 Publication Date. In view of the fact that there is a pending court decision regarding the transfer of the Laredo, Texas cable television franchise to Time Warner, the Social Contract has been modified so that it will not apply to the cable system serving Laredo, Texas unless and until there is a final court decision permitting the transfer.

within the time provided for under the Social Contract, subscribers to the cable systems that have not been upgraded will be entitled to refunds equal to the CPST rate increases provided by the Social Contract, with interest, plus a liquidated damages penalty of 15% of such amount. The Social Contract contains a provision that allows Time Warner to average broad categories of equipment and installation and associated costs for all of its systems on a geographic regional basis.

6. The Social Contract will resolve Time Warner's pending CPST cases, including CPST cases against the systems Time Warner recently acquired from Houston Industries, Inc. (KBLCOM) and Newhouse Broadcasting Corporation. Altogether this resolves 946 complaints. To resolve these cases, Time Warner will make cash refunds in the form of bill credits to certain customers totalling approximately \$4.7 million plus interest for the period beginning on the date of the applicable complaint and ending with the date of payment. Time Warner cannot implement any rate adjustment for the upgrade of a particular system unless the refund provided for under the Social Contract has been issued to such system or the issuance of the refund begins simultaneously with such rate adjustment. All refunds must be issued within six months of the first rate adjustment implemented with respect to the upgrade for the Time Warner systems. BST cases will not be resolved by the Social Contract. Those cases will continue to be resolved by Time Warner and the local franchising authorities pursuant to Commission rules.

7. Time Warner will create a "lifeline basic tier," priced to enhance the affordability of BST. Time Warner will accomplish this in two ways. First, on systems serving at least 85% of its total subscribers, Time Warner will reduce the price on its BST by 10% within six months of the effective date of the Social Contract, with a revenue neutral increase in CPST rates. Local franchising authorities may elect not to have this reduction by notifying Time Warner and the Commission in writing within 45 days of the effective date of the Social Contract. Second, on the remaining systems where BST rates have not been reduced by 10%. The streamlined lifeline basic tiers will carry only those stations required by law, such as must-carry stations, public, educational and governmental ("PEG") stations, and local origination. Any additional channels will be moved from the BST to the CPST with a corresponding revenue neutral decrease in the price of the BST and increase in the CPST price.

8. Time Warner will offer a free cable connection to all of the public schools located in the franchise areas where Time Warner provides cable service and that are passed by its systems. Time Warner also will provide a cable connection at cost to all secondary private schools whose students receive funding under Title I of the Education and Secondary School Act in such franchises that are passed by its systems. Time Warner will wire additional classrooms in existing schools at cost. For new public schools and existing public schools undergoing extensive rehabilitation, Time Warner will coordinate with the local officials and contractors to wire each of the classrooms in new schools free of charge, if Time Warner is notified of construction. BST and CPST will be provided to each outlet in the connected public and private schools without cost. Time Warner will also provide the

connected schools with a monthly educational program guide with curriculum support ideas to assist educators in effectively using the new services. In addition, Time Warner and Time Inc. are developing an on-line personal computer service. Once this service has been developed and test-marketed, Time Warner will offer this service to each connected school in areas in which the service is generally offered, free of charge, during the school year and will also provide a free modem to access the service. Time Warner will provide schools with additional modems at cost and will provide free service to each additional modem purchased. Time Warner also will sponsor workshops and materials so that teachers have the training necessary to appropriately use the services provided.

9. The Social Contract further provides that, in Time Warner systems where neither Time Warner nor its predecessors have created a la carte packages, Time Warner will be permitted to create Migrated Product Tiers ("MPTs"), consisting of up to four services migrated from the regulated tiers. The migrated channels will be priced at the rate regulated price with increases allowed for inflation and external costs in accordance with the Commission's price cap rules. There will be no limitation on the number of new channels that Time Warner may add to the MPTs at the price of up to \$.20 per channel plus license fees. After April 1, 1997, Time Warner may convert any MPT into a new product tier ("NPT"), as defined by Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Nos. 92-266, 92-215, Sixth Order On Reconsideration, Fifth Report And Order, and Seventh Notice of Proposed Rule Making, ("*Going Forward*") provided that the tier is offered without a buy-through requirement other than BST.⁷

10. Finally, during the term of the Social Contract, Time Warner will forego its right to use a cost of service justification to support any future rate increases in any franchise area covered by the Social Contract. The Social Contract requires that no later than 90 days following the end of each calendar year during which the Social Contract is in effect, and within 90 days following the end of the last month following expiration of the Social Contract other than calendar year end, Time Warner will provide the Commission and each local franchising authority having jurisdiction over an area covered by the Social Contract with a progress report outlining the amount of capital investments made, the number of subscribers affected by those investments, improvements in system reliability and service, and projected expenditure and upgrades for the following year.

11. The Social Contract may not be modified or terminated without the mutual agreement of both parties to the Social Contract. Time Warner may petition the Commission to modify or terminate the Social Contract based on any relevant change in applicable laws,

⁷ 10 FCC Rcd 1226, 1228 (1994). "These rules were adopted to provide cable operators with additional incentives to expand their facilities and services in a way that both ensures that cable rates are reasonable and expands the opportunities for cable programmers to reach viewers."

regulations or circumstances. In addition, in the event of any changes to the provisions of the 1992 Cable Act or any material changes to the Commission's rules thereunder relating to rates (BST, CPST or equipment) that are favorable to Time Warner, any Time Warner system may elect to be relieved from the relevant rate provisions in the Social Contract, but shall remain bound by all other provisions of the Social Contract.

12. We believe that the Social Contract is consistent with the goals for upgrade incentive plans which were outlined in the *Cost Order*. The Social Contract benefits subscribers by assuring reasonable and stable rates in all Time Warner systems, improving service offerings and picture quality with state of the art technology, increasing consumer choice by lifeline basic tier pricing and elimination of buy-through requirements, and providing refunds to customers. The Social Contract further benefits subscribers through Time Warner's agreement not to restrict subscribers' ability to remove, replace, or rearrange wiring so long as it does not interfere with TWC's ability to provide services and collect revenues from that subscriber or other subscribers in a multiple dwelling. Local franchising authorities benefit from the opportunity to assist elderly, low income, and basic only subscribers with the lifeline basic pricing. In addition, the Social Contract will reduce the administrative burden and cost of regulation for Time Warner, local governments, and the Commission. The Social Contract also provides a significant public benefit to all public schools and certain private secondary schools that are located within Time Warner franchise areas and passed by its systems.

13. The Social Contract will permit a rate structure that will allow Time Warner to focus on its long-term strategic planning and growth, having resolved its outstanding rate complaints. Local franchising authorities will retain their right to regulate rates for basic service, their right to negotiate upgrades and other benefits for their individual franchises, and their ability to comment and participate on any changes in this Social Contract that would affect their localities. The Social Contract ensures that the rights of local franchise authorities and subscribers to seek redress at the Commission will be preserved.

III. DISCUSSION

A. Waiver

14. Upgrade Incentive Plans represent an alternative to the Commission's usual procedures for resolving rate complaints against cable operators. Indeed, the Commission recognized in the *Cost Order* the experimental nature of this type of social contract.⁸ There are several aspects of the Social Contract that do not conform precisely to the Commission's rate regulation rules or to the stated experimental Upgrade Incentive Plan outlined in the *Cost Order*. We believe that the Social Contract furthers the Commission's policy goals of ensuring that cable operators expand the capacity and programs offered over their systems

⁸ *Cost Order*, 9 FCC Rcd at 4680.

where economically viable, and reducing regulatory burdens while still ensuring that cable rates are reasonable. As a result, we conclude that special circumstances warrant a deviation from our generally applicable rules and that waiver of certain of the Commission's rules is in the public interest.⁹

15. In particular, Time Warner seeks a waiver of § 76.923 to allow equipment cost averaging. This section of the rules sets forth the methodology for determining the rates for equipment and installation used to receive BST service. The intended purpose of the section is to ensure that equipment is charged at cost and that all BST subscribers pay for the equipment.¹⁰ Waiver of this provision to enable Time Warner to average equipment costs on a regional basis is consistent with the purpose of §76.923 because equipment will continue to be charged at cost; this cost will be spread across all subscribers in a region, rather than a franchise area.

16. Time Warner also seeks a waiver of § 76.961(e), which requires local franchising authorities to reimburse Time Warner for CPST franchise fees that were based on CPST charges that are being refunded to subscribers. Time Warner has agreed to waive its right to reimbursement by the franchising authorities; thus, this waiver provides a benefit to the local franchising authority and subscribers, and we see no reason to deny it. Time Warner also seeks a waiver of §§ 76.309(c)(i)(B) and 76.964 on a one-time basis to allow Time Warner to add service and change line-ups on less than 30 days' notice.

17. Time Warner seeks a one-time waiver of § 76.933 to allow it to implement rate and service restructuring and annual rate adjustments to the BST and the CPST on 30 days' notice, or less, subject to refunds and subject to the further condition that, if a local franchising authority exercises the opt-out provision after Time Warner commences implementation of the January 1, 1996 rate and service restructuring and adjustment, Time Warner will restore the 10% reduction in the BST rate in the next billing cycle (*i.e.* the difference between the new rate and the rate charged under the Social Contract, if a subscriber cancels service during the first month of implementation of the Social Contract). These provisions set forth customer service standards to ensure, among other things, that customers have adequate notice of changes in their service and time to cancel services. The Social Contract further provides that if any subscriber cancels its subscription to the relevant CPST within 30 days after the date of the first bill reflecting the CPST adjustment authorized by the Social Contract, Time Warner will issue a refund to that subscriber for the incremental amount attributable to such increase.

⁹ See, 47 C.F.R. § 1.3; see also *WAIT Radio V. FCC*, 418 F2d 1153,1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164,1166 (D.C. Cir. 1990).

¹⁰ See 47 C.F.R. § 76.923.

18. We understand the need for a waiver of these provisions if Time Warner is to implement the necessary changes by January 1, 1996. These waivers are on a one-time basis only. Subscribers will be protected if the local franchising authority opts out of the creation of a lifeline basic tier, or if subscribers choose not to receive the restructured service. We conclude that a waiver of these provisions is not inconsistent with the purposes of the provisions.

19. In addition, Time Warner seeks waivers of various Commission rules that it states are necessary to effectuate the terms of the Social Contract. At the core of the Social Contract is the upgrade incentive plan whereby Time Warner will rebuild and upgrade all of its domestic cable systems and in turn will be allowed to recover the costs of the upgrade over time by adding a charge to the highest penetrated CPST during the years of the Social Contract. Consequently, Time Warner seeks a waiver of §§ 76.922 and 76.933 to allow Time Warner to recover the CPST rate increase for the upgrade in lieu of the methodology provided under our *Going Forward* rules. Time Warner also seeks to waive: 1) § 76.960, requiring that prior approval be sought for rate increases for one year after CPST rate reduction under § 76.933; 2) §§ 76.922(b), 76.930, and 76.956, to allow Time Warner to use a one-time restructuring form in situations where systems become newly regulated; and 3) § 76.922 to allow revenue neutral, pro-rata adjustments rather than adjustments to the maximum permitted rate less previous external costs ("residual rate") where the lifeline tier and/or an MPT are created in accordance with the Social Contract terms. We believe that the Social Contract provides significant overall benefits and that the waiver of these provisions is not inconsistent with the purposes of the provisions and such waiver is in the public interest. Accordingly, we hereby find good cause to waive these provisions of the Commission's rules necessary to effectuate the terms of the Social Contract.

B. Preemption of State and Local Notice Requirements

20. Time Warner asked the Commission to preempt, on a one-time basis, those local franchise rules that require advance notice of rates and service charges to subscribers in connection with its initial implementation of the Social Contract. Time Warner asserts that it will otherwise be unable to comply with the January 1, 1996 rate restructuring date contained in the Social Contract and to fulfill 60 or 90 day local notice requirements.¹¹

¹¹ As noted in the prior section, Time Warner also seeks a waiver of § 76.964, on a one-time basis. This provision requires cable systems to give 30 days written notice both to subscribers and local franchising authorities before implementing any rate or service change. As we noted, this waiver is necessary for Time Warner to implement the provisions of the Social Contract and we think this one-time waiver is in the public interest.

21. We believe that preemption is appropriate in this case as the state and local notice requirements may hinder Time Warner's ability to implement rate adjustments uniformly pursuant to the terms of the Social Contract by January 1, 1996. Preemption generally is held to be appropriate in cases such as this one where the local law conflicts with agency regulation or frustrates the purposes of the regulation.¹² Indeed, many of the goals regarding upgrade incentive plans outlined in the *Cost Order*, and met in this Social Contract, could not be achieved if implementation of rate restructuring does not occur by January 1, 1996. For example, many of the programming cost increases occur on January 1 of each year. As such, Time Warner would seek to adjust its rates to account for these increased costs as provided for under our rules. In order to achieve the Social Contract's goal of having a one time rate adjustment, and thus provide rate stability to subscribers, it is essential that Time Warner implement the upgrade surcharge provided for under the Social Contract by January 1, 1996.

22. We further believe that prompt implementation of the Social Contract best serves the public interest. Thus, to allow Time Warner to implement the rate restructuring and MPT provisions of the Social Contract, any local franchise agreement or any state or local law or regulation is preempted on a one-time basis to the extent that it requires Time Warner to give greater than 30 days advance notice of rate and service changes to subscribers.¹³ Such preemption shall be limited to the period prior to February 1, 1996. If Time Warner is unable to commence implementation of such refunds and rate adjustments by January 1, 1996, but commences such implementation between the period January 1, 1996 and February 1, 1996, it shall provide at least 30 days' notice to local franchising authorities and subscribers.

23. The Social Contract further provides that if any subscriber cancels its subscription to the relevant CPST within 30 days after the date of the first bill reflecting the CPST adjustment authorized by the Social Contract, Time Warner will issue a refund to that subscriber for the incremental amount attributable to such increase. Accordingly, the preemption of state and local notice requirements and the waiver of Commission notice

¹² *City of New York v. Federal Communications Commission*, 486 U.S. 57, 64 (1988).

¹³ See Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992, 8 FCC Rcd 3652 (1993); Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Second Order On Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119, 4184 n.182 (1994). The Commission preempted any local and state requirements that required cable systems to give more than 30 days' notice of rate and service changes to subscribers where application of the local and state provisions would serve to prevent a system from bringing its rates into compliance with the new benchmark rules by the end of the refund deferral period.

comments will not injure subscribers.

C. Provisions of the Social Contract

24. The Commission received numerous comments on several terms of the proposed Social Contract. This section addresses the concerns of the commenters and sets forth modifications to the proposed Social Contract.¹⁴

a. System Upgrades and CPS Price Cap Increases

(i) Terms of the Social Contract

25. The Social Contract provides for an investment of \$4 billion over a five year period to upgrade all of Time Warner's systems. As part of this investment, each Time Warner system will have a minimum bandwidth capacity of 550 MHz and at least 50% of Time Warner's subscribers will have access to a minimum bandwidth capacity of 750 MHz. In the 750 MHz systems, at least 200 MHz is expected to be used for digital distribution. All Time Warner systems will be deployed to include fiber to the node architecture, which will improve signal quality and reliability for all subscribers. Time Warner's ability to correct outages in a more timely manner will also be improved through the use of telemetry to locate problems within the system.

26. To fund this investment, Time Warner will be permitted to increase the monthly rate for the most highly penetrated CPST in each of its systems by \$1.00 during each year of the Social Contract. Further, this increase will serve as the only increase on the CPST with the exception of revenue-neutral adjustments provided elsewhere in the Social Contract and adjustments for inflation and external costs permitted under the Commission rules. For the term of this contract, Time Warner waives its right to increase its CPST rates pursuant to the Commission's *Going Forward* rules. Moreover, Time Warner will add 60% of all new analog services to the CPST offered without any further increase in rates beyond the \$1.00 per year permitted by the Social Contract. This will equal an average of 15 new channels to the CPSTs on Time Warner systems. Additionally, 60% of the capital cost of the upgrade will be used for regulated purposes. Time Warner waives its right to file a cost of service showing to justify any rate increases during the term of the Social Contract.

27. The Social Contract mandates that Time Warner's investment in the upgrade of its systems will be conducted without discrimination based on the socio-economic status of Time Warner's subscribers. If Time Warner fails to upgrade all of its systems as prescribed in the Social Contract, Time Warner will provide refunds (in the form of bill credits) to all subscribers not receiving the upgraded service. The refunds will equal the amount of the total

¹⁴ The majority of comments received were in support of the Social Contract. A list of those commenters is attached as Appendix A.

surcharge levied on each subscriber plus interest and a 15% liquidated damages penalty on the refund amount.

(ii) Comments

28. Most commenters express support for the system upgrades, maintaining that subscribers will benefit from more advanced technology, access to the information superhighway, and improved picture quality.¹⁵ For example, Kern County, California states that Time Warner will bring information superhighway services to a "vast number of its residents", a substantial number of whom "are underserved and live in rural areas."¹⁶ Many commenters support Time Warner's plan to phase in rate adjustments over a five year period because it spreads the costs over a period of time and provides for rate certainty.¹⁷

29. Many commenters did not oppose the concept of the system upgrade but nevertheless raised various objections to provisions in the Social Contract. Some commenters claim that the upgrade would be required in any event either because of the efforts of local franchising authorities or competitive requirements.¹⁸ Other commenters claim either that too much or too little of the upgrade is to be dedicated to digital services and that those jurisdictions which had already required upgrades will be disadvantaged vis-a-vis those jurisdictions that previously did not require upgrades.¹⁹ Some commenters oppose any CPST rate increase that exceeds the limits of the Commission's *Going Forward* rules. First, these commenters claim that the rate increase: 1) should be limited to the amount of the *Going Forward* increase which Time Warner could have received during the same period, 2) should not cover the cost of new services which customers have not requested, 3) should not be required for an upgrade which is a settlement concession, or 4) should not include external costs).²⁰ Second, these commenters claim that the Commission's cost-of-service rulings

¹⁵ See, e.g., Comments of Houston, Texas at 1; Comments of Massachusetts Cable Television Commission at 2; Comments of Richmond, New York at 1.

¹⁶ Comments of Kern County, California at 1.

¹⁷ See, e.g., Comments of John W. Peavy, Jr., Houston City Council; Comments of Massachusetts Cable Television Commission at 2; Comments of Bessemer, Alabama at 1.

¹⁸ Comments of Lawndale, California at 4; Comments of Monroe, North Carolina at 1; Comments of Austin and Sunset Valley, Texas at 4.

¹⁹ See, e.g., Comments of Portland, Maine at 1-2.

²⁰ See, e.g., Comments of Monroe, North Carolina at 6; Comments of Portland, Oregon at 5-6; Comments of Austin and Sunset Valley, Texas at 4; Comments of Indian Rocks Beach, Florida; Comments of Roberta S. Tharp.

require that the rate increase not be implemented before the upgrade is in service.²¹ Finally, some of these commenters state that the rate increase will require users of regulated cable services to subsidize other Time Warner services. Ameritech New Media Enterprises, Inc., Bell Atlantic Telephone Companies and Cincinnati Bell Telephone Company contend that Time Warner will use the revenues from the rate increases to enter the local telephone market. In particular, these companies propose that Time Warner: 1) account for the costs of the upgrade so that those costs can be properly allocated; 2) file an application for a certificate of public convenience and necessity under Section 214 of the Communications Act²²; and 3) be required to adhere to the rules applicable to telephone companies on cost accounting, cost allocation, depreciation, transactions with affiliates, and joint marketing of services.²³ The City of Gardena raises a question as to whether system upgrades required by franchising authorities could be passed through to subscribers along with the upgrades required by the Social Contract.²⁴ Finally, some commenters raise questions as to the implementation of the rate increase, and some have misconceptions about the meaning of language in the Social Contract. For example, one community inquired as to how the rate increase will relate to the increase in the CPST to offset the BST rate reduction.²⁵

30. In its reply comments, Time Warner contends that the Social Contract requires all communities it serves to have upgrade benefits. Time Warner further maintains that, even where Time Warner already is committed to making upgrades, the Social Contract provides a firm completion deadline and a federally-enforceable upgrade commitment with meaningful penalties.²⁶ Time Warner denies that its rate increase includes the cost of any equipment needed to provide telephone service, such as telephone switches, and further contends that the Commission has carefully reviewed Time Warner's costs to preclude cross-subsidies.²⁷ Time

²¹ Comments of Portland, Oregon at 6-7.

²² Section 214 of the Communications Act requires a certificate of public convenience and necessity from the Commission before a common carrier may undertake the construction of a new line or of an extension of any line, or acquire or operate any line or extension thereof, or engage in transmission over or by means of such additional or extended line.

²³ Comments of Cincinnati Bell Telephone Company; Reply Comments of Ameritech New Media Enterprises, Inc.; Reply of Bell Atlantic.

²⁴ Comments of Gardena, California at 2.

²⁵ See, e.g., Comments of Southwest Suburban Cable Commission at 2; Comments of Judith L. Kasper at 2-3.

²⁶ See Time Warner Cable Reply Comments at 29.

²⁷ *Id.* at 30.

Warner states that it believes that it has accomplished the goal of undertaking only those upgrades that are economically justified and best meet customer needs in the most efficient manner possible.²⁸ According to Time Warner, the purpose of the upgrade is to improve reliability and picture quality, and to allow increased system addressability and interactive capability.²⁹ Time Warner also argues that phasing in the cost of the upgrade, as provided under the Social Contract, provides predictable, though modest, rate increases, avoiding rate shock.³⁰ Time Warner states that subscribers will benefit because spreading the cost over five years is preferable to paying one large sum once the upgrade is completed.³¹ To the extent that commenters argue that the rate increases will exceed the amount allowed by the *Going Forward* rules, Time Warner argues that those rules provide an incentive to add programming services, not an incentive to add capital for the upgrade of channel capacity.³² Time Warner also notes that it has agreed to waive any right it may have to take any future increases under the *Going Forward* rules as of the effective date of the Social Contract.³³ Finally, Time Warner maintains that it has no intention of passing through the cost of any local franchising upgrade requirement that does not exceed the requirements in the Social Contract.³⁴

(iii) Discussion

31. The majority of the commenters have expressed support for the provision of the Social Contract that requires Time Warner to invest \$4 billion to rebuild and upgrade Time Warner's cable systems. The commenters support the deployment of advanced technology and improved picture quality. They also support Time Warner's plan to phase in the payments over a five year period to avoid rate shock.

32. We find that the upgrade provision of the Social Contract represents a valuable benefit to subscribers in terms of advanced technology, improved reliability and picture quality, and increased programming choices. Further, we conclude that phasing in the cost of the upgrade, in contrast to a one-time increase when the upgrade is completed, is preferable because it provides predictable rate increases, avoiding rate shock.

²⁸ *Id.*

²⁹ *Id.* at 30-31.

³⁰ *Id.* at 35.

³¹ *Id.*

³² *Id.* at 34.

³³ *Id.*

³⁴ *Id.* at 35.

33. While Time Warner may have chosen voluntarily to upgrade or have been required by local franchising authorities to upgrade some sections of its system, the Social Contract binds Time Warner Cable to continue to make significant upgrades throughout its systems. Those local franchising authorities that have negotiated upgrade benefits will not be disadvantaged. The Social Contract makes clear that local franchising authorities can enforce local franchise agreements or negotiate future agreements which provide for upgrade benefits exceeding the upgrade benefits of the Social Contract. Section III. J. 2. a. states that "[n]othing herein shall affect the enforceability of any otherwise valid preexisting local franchise agreement, ordinance, local law or regulation which provides benefits which exceed those provided in this Contract relating to system upgrades or the wiring of schools, nor shall local franchising authorities be restricted in their authority to negotiate for such additional benefits after the Effective Date of this Contract." Further, Time Warner has agreed to modify the Social Contract to make clear that, except in those situations where a local franchising authority places upgrade requirements on Time Warner that exceed the requirements of the Social Contract, Time Warner will not seek to pass through any capital costs (other than the surcharge provided under the Social Contract) to the subscribers.

34. The upgrade provision embodies a balance between a guarantee of an average of 15 new analog channels to benefit CPST subscribers and the initiation of digital distribution technology, which will expand the capacity of Time Warner to add programming and improve picture quality. As noted in the Social Contract, Time Warner agrees that at least 60% of all capital expended in connection with the upgrade commitment described in the Social Contract will be applied for the benefit of BST and CPST subscribers. The Commission does not believe that it is in the public interest for it to determine how much digital and analog capacity Time Warner should use for particular programs and markets, since such a requirement might limit the economic feasibility of the upgrade. However, we point out that Time Warner may use digital capacity for the benefit of regulated services.

35. We are mindful of the concerns expressed by some commenters that the rate increases may be used to pay for Time Warner's plans to provide competitive services. We have examined Time Warner's cost data and believe that the costs of the upgrade are reasonable and necessary and that Time Warner has fairly allocated the costs of the upgrade between its current regulated and non-regulated operations. Further, Time Warner has agreed to a modification to the Social Contract which provides that the amount of the capital costs of the upgrade that will be recovered in the rate increases on regulated services will be applied for the benefit of regulated BST and CPST subscribers during the period of the Social Contract. The Commission also has the authority under the Social Contract to audit Time Warner's books and records and to interview Time Warner corporate employees to ensure compliance with this amendment.³⁵ Indeed, if it is determined that Time Warner has not complied with the obligations under the Social Contract, we may exercise any of the rights

³⁵ See Section III.G.3.

and remedies which are attendant to violations of a Commission order.³⁶ Under these circumstances, we find it unnecessary to adopt the suggestion of several telephone companies that Time Warner be required to comply with the rules applicable to telephone companies.³⁷

36. The contention that the upgrade increases will exceed the amount permitted under the *Going Forward* Order is misplaced. The *Going Forward* Order was intended to be an incentive for operators to add a small number of cable channels to existing systems. The increases under the Social Contract, on the other hand, are intended to enable Time Warner to undertake a major system upgrade, which will modernize facilities to provide improved quality and efficiency and to add new tiers of services and new types of services.³⁸ Consequently, the rate increases are not primarily being paid for new services, but for improved quality of services as a result of modernization. The Social Contract does not change the requirements of the Commission's rules governing the pass-through of external costs and inflation. Finally, the Social Contract provides that the upgrade rate increase is to be assessed annually on all CPST subscribers, in addition to any amount necessary to offset the 10% BST rate reduction.

b. Equipment and Installation Averaging

(i) Terms of the Social Contract

37. Under the Social Contract, Time Warner will be permitted to establish a blended average regional rate for the equipment basket categories of hourly service charge, installations, remote control devices, addressable converters, non-addressable converters, other leased equipment, and customer tier changes. The geographic regions used for averaging are shown on Appendix B of the Social Contract and essentially correspond with the Areas of Dominant Influence ("ADIs") served by Time Warner. Regional averaging will be accomplished by the filing of a Form 1205 Equipment Form or its equivalent with the Commission on an annual basis beginning no sooner than December 1, 1995. Time Warner may begin charging revised equipment rates upon 30 days' notice to the Commission subject to a refund pursuant to Commission rules. The local franchising authorities will be responsible for reviewing the rates charged to ensure consistency with the rates approved by the Commission. If Time Warner charges rates in excess of those permitted by the Commission, the local franchising authority may order a refund.

(ii) Comments

³⁶ See Section III.J.2.b.

³⁷ To the extent that Time Warner uses its cable systems to provide telephone service, it would be subject to applicable common carrier regulations.

³⁸ See *Cost Order*, 9 FCC Rcd at 4677-4680.

38. Commenters who support the equipment and installation averaging contend that it will streamline the process for review of these rates.³⁹ On the other hand, some local franchising authorities claim that both Commission regulation of equipment rates and averaging of equipment rates violate the 1992 Cable Act.⁴⁰ Other local franchising authorities raise specific questions about blending, including whether blended rates will track costs, whether there will be different rates for different types of equipment, whether addressable converters will be subsidizing non-addressable converters, whether the geographic regions are appropriate for blending, the effect blending will have on the level of rates, and how the Commission and the local franchising authorities will work together under the blending proposal.⁴¹

39. In its reply comments, Time Warner notes that, in the *Continental Contract Order*, we granted a waiver to permit Continental to aggregate equipment and installation costs on a state or regional basis.⁴² Time Warner notes that we granted this waiver because it was our belief that equipment averaging will serve the objectives of the Upgrade Incentive Plan and will minimize drastic increases in rates for subscribers as upgrades take place. Time Warner contends that because the Social Contract has a similar equipment averaging provision, the rationale in the *Continental Contract Order* applies here. Time Warner states that it would be willing to establish separate charges for addressable and non-addressable converters, due to specific concerns raised regarding converters. Time Warner further explains that, in those situations where any local franchising authority is still reviewing a Form 1205, the process will continue under local franchising authority jurisdiction.⁴³ According to Time Warner, after the effective date of the Social Contract, the Commission will review future equipment rates, but the local franchising authority may order roll-backs and refunds of any rate in excess of that approved by the Commission, subject to the normal Commission appeal process.⁴⁴

(iii) Discussion

³⁹ See Comments of Chapel Hill, North Carolina at 2.

⁴⁰ See, e.g., Comments of City of Raleigh, North Carolina at 2; Comments of Middletown, Pennsylvania; Reply Comments of New York City Department of Information Technology and Telecommunications at 18-20.

⁴¹ See, e.g., Comments of the Cable Television Review Commission of San Diego, California at 2-3; Comments of Jacksonville, North Carolina at 2-3; Comments of Columbus, Ohio at 2; Comments of John Fitzgerald.

⁴² Time Warner Reply Comments at 52.

⁴³ *Id.*

⁴⁴ *Id.* at 52-53.

40. We believe that a waiver of our rules to allow Time Warner to average broad categories of equipment and various installation costs for all of its systems on a regional basis is in the public interest. As in the case of the *Continental Contract*, we conclude that equipment averaging will minimize drastic increases in rates for subscribers as upgrades take place and will reduce the administrative burdens on Time Warner to prepare rates on a franchise by franchise basis. While the rates for particular franchise areas may change, the overall impact will be revenue neutral. We conclude that the geographical regions established in the Social Contract are appropriate because they reflect Time Warner's regional cost centers and therefore would simplify cost tracking. We do note, however, a concern raised by commenters that addressable converters will be subsidizing non-addressable converters. To address this concern, Time Warner has agreed to a modification to the Social Contract which provides that the prices of addressable and non-addressable converters will be separately established.

41. We conclude that this provision of the Social Contract does not violate any provision of the 1992 Cable Act. As we recognized in the *Continental Contract Order*, the 1992 Cable Act does not mandate the level at which equipment and installation rates are established, i.e. the franchise, system, regional or company level.⁴⁵ Rather, Congress specified that the rates must be based on actual cost.⁴⁶ This provision in the Social Contract is consistent with the 1992 Cable Act's directive that the Commission establish standards by which local franchising authorities establish rates for installation and equipment used to receive basic service. We will review new regional rates submitted by Time Warner for compliance with the requirement that they be true regional averages of the local equipment and installation costs. Notice of our decisions will be provided to local franchising authorities. Through refunds or rate roll-backs, the local franchising authorities will continue to enforce the requirement that Time Warner charge equipment and installation rates which comply with our standards.⁴⁷

c. Resolution of Pending Cases

(i) Terms of the Social Contract

42. Under the Social Contract, Time Warner will settle its existing benchmark CPST cases. Time Warner is required to provide refunds of approximately \$4.7 million to customers in the franchise areas shown in Appendix A of the Social Contract. Refunds will continue to accrue interest until the date that the refunds are actually paid. Time Warner is

⁴⁵ *Continental Contract Order* at ¶ 30.

⁴⁶ 47 U.S.C. § 623(b)(3).

⁴⁷ Under the Social Contract, equipment rate cases which are pending before the local franchising authorities at the effective date of the Social Contract will remain within the local franchising authorities' jurisdiction.

also precluded from making any rate adjustment allowed under the Social Contract prior to the time such refunds are made to affected subscribers. The refunds were determined based upon the Commission's review of Time Warner's rate justifications for the CPST where a complaint had been filed. Pending cases justifying rates for the BST will continue to be resolved with the local franchising authorities.

(ii) Comments

43. Numerous commenters expressed support for the resolution of the pending Time Warner rate cases in the Social Contract as a way to avoid litigation expenses and to conserve resources.⁴⁸ However, a number of local franchising authorities raised concerns regarding the settlement of the rate cases in this Social Contract. Among the concerns, some local franchising authorities contended that complainants have the statutory right to have their complaints adjudicated individually on the record, that the Commission violated its own *ex parte* rules, and that the Commission's proposed procedures for social contracts were not followed.⁴⁹ Others argued that the local franchising authorities should receive refunds and punitive damages, and that the refunds should be paid earlier than provided for under the Social Contract.⁵⁰ Further, the City of St. Petersburg expressed concern that there was no finding of wrongdoing and that the refund amounts can be recovered by Time Warner's price cap and other increases allowed under the Social Contract.⁵¹ Some local franchising authorities contend that the finding that the Time Warner rates are reasonable will result in rate increases in the BST rates.⁵²

⁴⁸ See, e.g., Comments of the New York State Commission on Cable Television at 13; Comments of the Massachusetts Cable Television Commission at 1-2; Alabama Public Service Commission at 1.

⁴⁹ See, e.g., Comments of the Cities of Austin and Sunset Valley, Texas at 1-2; Comments of Middletown, Pennsylvania at 4-14; Reply Comments of the New York City Department of Information Technology and Telecommunications at 6-18.

⁵⁰ See, e.g., Comments of Ithaca City Cable Commission at 4-5; Comments of Judith L. Kasper at 3.

⁵¹ Comments of St. Petersburg, Florida. The Town of Brighton claims that it was excluded from the refund list because it set forth an incorrect community unit ID number in its complaint. Comments of Brighton, New York at 2.

⁵² Comments of Portland, Oregon at 7; Cities of Austin and Sunset Valley, Texas at 4-5.

44. In its reply comments, Time Warner states that the Commission has stated a general policy "to make every effort possible to resolve appropriate disputes through mediation, arbitration, settlement negotiation, negotiated Rule Making and other means of dispute resolution."⁵³ Citing the *Rate Order*, Time Warner further contends that the Commission has advocated the use of alternative dispute resolution techniques to decide cable rate cases. Time Warner further contends that each complaint has in fact been reviewed on an individual basis, and that the resolution of the complaints in this Social Contract will result in immediate bill credits to subscribers in contrast to the delay that will result if each case is individually litigated.⁵⁴ In reply to the City of St. Petersburg, Time Warner states that findings of no wrongdoing are necessary to give operators the incentive to enter into social contracts, and that here there is no evidence of wrongdoing. Time Warner further states that the ability of Time Warner to recover its future costs under the price cap provision is irrelevant to refunds for past overcharges.⁵⁵ Finally, in response to comments that the Commission's *ex parte* rules and other social contract procedures were not followed, Time Warner first notes that the commenters fail to specify which particular provisions of the Commission's *ex parte* rules have been violated. In any event, Time Warner states that it has followed the same procedure as the Commission approved with respect to the Continental Contract, i.e., it has made an initial proposal to the Commission, including an outline of its objectives. Time Warner notes that in the *Continental Contract Order*, the Commission waived its requirement⁵⁶ that a company's initial proposal for an upgrade incentive plan include statements from affected local franchising authorities because there are "significant number of franchises with diverse interests and concerns".⁵⁷ Time Warner argues that given the number of commenters and affected franchising authorities in this case, waiver of this requirement is even more applicable here. Time Warner further notes that the social contract negotiation procedures followed here were announced in the Commission's *Cable Ex Parte Order* and that consistent with that *Order*, (and similar to the case with the Continental Contract), all interested parties have had an opportunity to comment on the Social Contract.

(iii) Discussion

⁵³ Time Warner Reply Comments at 37 (citing Use of Alternative Dispute Resolution in Commission Proceedings and Proceedings in which the Commission is a Party, 6 FCC Rcd at 9 (1991)) .

⁵⁴ Time Warner Reply Comments at 37-39.

⁵⁵ *Id.* at 39-40. Time Warner also notes that the Commission staff is investigating whether Brighton and certain other New York communities should be added to the communities listed as receiving refunds. *Id.* at 21. Time Warner has now agreed to provide refunds to these communities as is reflected in the revised Appendix A.

⁵⁶ *Cost Order*, 9 FCC Rcd at 4680.

⁵⁷ *Id.* at 42-43.

45. We conclude that proper procedures were followed with respect to the Social Contract. As an initial matter, we address the comments regarding the resolution of the rate complaints as part of the Social Contract. We note that the 1992 Cable Act provides the Commission with broad discretion to resolve cable rate complaints. The 1992 Cable Act directs the Commission to create "fair and expeditious procedures for the receipt, consideration, and resolution of complaints."⁵⁸ Under the 1992 Cable Act, the Commission also is charged with establishing "the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable."⁵⁹ Pursuant to these statutory provisions, the Commission adopted rules providing for the use of social contracts as one method of setting cable rates.⁶⁰ We believe that the broad language of Congress' mandate allows the Commission to choose the procedures used to resolve complaints. We further believe that Congress' desire to simplify cable rate regulation supports the adoption of the most expeditious means of resolving complaints that will afford adequate protection for the subscribers. Contrary to the claims of some commenters, there is no statutory requirement that each rate complaint be individually adjudicated. Rather, the Commission is required to establish procedures to resolve rate complaints and to provide refunds of excessive charges. A social contract is one such procedure.

46. We find that the rates provided for in the Social Contract are reasonable. Although past rates are not found to be unreasonable, the Social Contract provides for refunds of amounts paid in excess of rates we find in this Order to be reasonable. Those rates were arrived at after making certain adjustments claimed by Time Warner and after factoring in the public interest benefit to consumers of prompt, certain relief. Moreover, although we do not rule on the merits of each of Time Warner's claims, we believe that it is fully consistent with the 1992 Cable Act to consider the benefits of avoiding the delays and uncertainty of litigation in setting rates within the range of reasonableness. Further, we believe that it is fully consistent with the 1992 Cable Act, as well as the social contract rules, to consider upgrades and other improvements in service as part of a determination of what constitutes a reasonable rate. Finally, we do not believe that deviation from our usual practice of requiring refunds to subscribers and instead requiring refunds and punitive damages to local franchising authorities is warranted. Our rules provide for refunds to subscribers and do not provide for punitive damages in any case. Further, we do not believe that six months is an unreasonable period for Time Warner to make refunds, in view of the implementation and billing problems involved in a nationwide settlement. Thus, we conclude that the Commission has the authority to resolve rate complaints in the manner embodied in the Social Contract.

⁵⁸ 47 C.F.R. § 5443(c)(1)(B).

⁵⁹ 47 U.S.C. § 543(c)(1)(C).

⁶⁰ *Cost Order*, 9 FCC Rcd at 4677-4680.

47. In the *Cable Ex Parte Order*, we noted that "[v]arious cable television system operators have made presentations to the Commission on issues relating to the Commission's cable television rate regulations. These communications have generally been in the nature and context of broad policy discussions regarding the rules as well as the future application of the rules to the operators, but frequently also have focused on the specific economic situation and future prospects of a particular company."⁶¹ We held that relaxed *ex parte* rules are applicable to such discussions "that are general in nature although they potentially implicate specific pending rate proceedings."⁶² These are the very type of discussions that occurred here. A party wishing to take advantage of the modified *ex parte* procedures must: 1) submit to the Cable Services Bureau a written request to meet and, if applicable, a request for relaxed *ex parte* treatment; 2) receive Bureau approval to meet and, approval of the relaxed treatment; and 3) in the event of the development of a specific company-wide proposal or proposed resolution, serve all parties to each affected pending rate complaint and/or appeal proceeding with the final version of the proposal or proposed resolution. The *Cable Ex Parte Order* states that "the Commission will take no action based on any such proposal or proposed resolution without it having first been served on all parties to each affected pending rate complaint and appeal proceeding and without providing not less than thirty days for comment."

48. We conclude that these requirements were complied with here. On May 4, 1995 Time Warner made the necessary written request for application of relaxed *ex parte* rules in order to engage in general discussions. This request was subsequently granted by the Cable Services Bureau. All complainants and affected local franchising authorities were served with a copy of the proposed Social Contract and given 40 days to comment. These comments have been reviewed and considered by the Commission and, in many instances, have resulted in changes to the Social Contract. The Commission's *ex parte* procedures set forth in the *Cable Ex Parte Order* have been fully complied with as to the Social Contract.

49. We further address those comments that the Social Contract procedures set forth in the *Cost Order* were not followed. In the *Cost Order*, the Commission stated that it would consider upgrade proposals and directed any interested cable operator to "submit a proposal . . . accompanied by a written statement by any certified franchising authority with jurisdiction over cable systems affected by the plan of its views concerning the proposed agreement."⁶³ In the *Continental Contract Order*, we noted that "given that the initial proposal and subsequent negotiations affected a significant number of franchises with diverse interests and concerns, it is more efficient and has proven more practical for the Commission to negotiate the proposed

⁶¹ *Cable Ex Parte Order* at 3.

⁶² *Id.* at 4.

⁶³ *Cost Order*, 9 FCC Rcd at 4680.

Social Contract with Continental." ⁶⁴ In the Continental proceeding, we waived, on our own motion and for good cause shown, the requirement that at the time a proposal is made a statement be filed by the local franchising authority. However, consistent with the requirement in the *Cable Ex Parte Order*, this waiver was conditioned on local franchising authorities and complainants being given the opportunity to express their views after the Public Notice was issued.⁶⁵ We note here that there are significantly more local franchising authorities affected by the Social Contract than were affected by the Continental Contract and that these local franchising authorities likewise have diverse interests and concerns. We conclude that the rationale stated in the *Continental Contract Order* for waiving the requirement that statements from affected local franchising authorities be included in the proposal is applicable in this case. As noted above, the comment period and extensions have provided significant opportunity for local franchising authorities to express their views as to the Social Contract. We believe it is appropriate to waive, on our own motion and for good cause shown, the requirement in the *Cost Order* that a company's initial proposal for an upgrade incentive plan include statements from affected local franchising authorities.

50. The City of St. Petersburg's concern that there is no finding of wrongdoing is misplaced. One of the goals of the Social Contract is to resolve disputed issues without requiring the Commission to spend significant time and resources to make a finding of any wrongdoing as to these issues. We also note that the statement in the Social Contract finding that the CPST rates, other than those resolved in Appendix A to the Social Contract, are reasonable has no bearing on determinations by local franchising authorities as to the reasonableness of BST rates. Local franchising authorities may continue to make their own determination as to the reasonableness of BST rates without being bound by rates derived as a result of negotiations of the Social Contract.

51. Finally, under Sections 76.942(f) and 76.961(e) of the Commission's rules, local franchising authorities are required to return to cable operators an amount equal to that portion of the franchise fee that was paid based on the total amount of refunds, when refunds are ordered by the local franchising authority or the Commission. We wish to clarify that local franchising authorities for Time Warner's systems are not required to return any portion of franchise fees collected from Time Warner pursuant to the terms of the Social Contract. The Commission has not made a determination that Time Warner has imposed unreasonable rates on subscribers in the Social Contract.

d. Lifeline Basic Tier Rates

(i) Terms of the Social Contract

⁶⁴ See *Continental Contract Order* at ¶ 70.

⁶⁵ *Id.* at ¶¶ 11, 70.

52. The Social Contract provides that Time Warner will create a "lifeline basic tier" priced to enhance the affordability of basic service. Time Warner will accomplish this in two ways. First, on systems serving at least 85% of its total subscribers, Time Warner will reduce the price of its BST by 10%, with a corresponding revenue neutral increase in CPST rates. In systems where Time Warner proposes to apply the 10% BST reduction, local franchising authorities may elect not to have this lifeline reduction by notifying Time Warner and the Commission in writing within 45 days of the effective date of the Social Contract. Second, on the remaining systems, Time Warner will restructure the BST to create a lifeline type service consisting only of stations required by law to be carried on the BST. All other existing BST channels will be moved from the BST to a CPST with a corresponding revenue neutral decrease in the price of the BST and an increase in the CPST price.⁶⁶

⁶⁶ With respect to the procedures that should be followed in the event Time Warner incorrectly restructures the BST rates, we note that local franchising authorities should follow the existing procedures and the new procedures recently adopted by the Commission. *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*, FCC 95-347 (released September 22, 1995) ("*Thirteenth Reconsideration Order*"). Specifically, as provided by our rules, local franchising authorities will have a 30-day review period to evaluate the reasonableness of Time Warner's initial restructured basic service tier rate, after Time Warner provides notice of the rate restructuring. We note that each regulated local franchising authority will receive a form from Time Warner illustrating the lifeline restructuring.

If the local franchising authority has not reached a decision in the initial 90-day review period, the local franchising authority need not issue an accounting order to preserve its right to require a refund after the 90-day review period. Thus, a local franchising authority may order refunds with respect to the initial restructured rate for the lesser of the period from the effective date of the restructured rate to the date of its rate order of the 12 month period preceding the date of its rate order. At any time before the local franchising authority issues a rate order, Time Warner may inquire as to whether the local franchising authority is continuing to review Time Warner's initial restructured rate. If Time Warner makes such an inquiry, the local franchising authority must respond to Time Warner within 15 days of receiving the inquiry. If the local franchising authority fails to respond, it will lose its ability to issue refunds with respect to the initial restructured rate after the initial 90-day review period.

We note that under the Social Contract, as part of the initial restructuring of rates, Time Warner is required to reduce the BST rate by 10% to create the lifeline basic tier. Such reduction shall be offset by an adjustment to the CPST rate to create a revenue neutral rate restructuring. Because the initial rates for the BST and the CPST are related, an error in setting the BST or the CPST affects this rate relationship. Therefore, Time Warner may correct the initial BST rate or CPST rate, if Time Warner initially restructures rates

53. Time Warner will not add any additional satellite channels to the BST for the term of this contract, except as required by law or regulation. Furthermore, in the event that the Commission's must-carry rules are rendered invalid, Time Warner may discontinue carriage of local broadcast stations but all local broadcast stations that it continues to carry must be carried on the BST. To the extent that Time Warner discontinues the carriage of any broadcast station, Time Warner may substitute any programming service in place of the discontinued station to maintain the size of the BST. This substitution is limited to an average of three services per system over all Time Warner systems and five services for any individual Time Warner system. The Social Contract provides that these substitutions only will affect BST rates and only to the extent there are changes in external programming charges to Time Warner.

(ii) Comments

54. Most commenters support the creation of a lifeline BST because low cable rates are essential to various groups including the elderly and low-income persons.⁶⁷ Of those commenters who expressed opposition, the concerns are: 1) a large number of CPST users will be supporting a low rate for a few BST-only subscribers; 2) BST is not important where the reception of broadcast television is clear; 3) local franchising authorities might prefer other benefits to the creation of a lifeline BST; and 4) the restructuring of the BSTs will enable Time Warner to remove important channels from BST and increase prices for services that previously were regulated.⁶⁸ Commenters also raise various questions with respect to the creation of a lifeline basic tier. They question whether the Social Contract permits Time Warner to exclude 15% of its systems from the reduction in BST (in light of the Social Contract provision that at least 85% of Time Warner's systems will be changed to a lifeline basic). They ask whether the restrictions contained in the Social Contract precluding increases in BST rates and the number of BST channels should be changed (either because of the desire of a local franchising authority to make more extensive BST services available or the desirability of promoting low power television). They also raise concerns as to: 1) whether the reduction in BST channels will reduce franchise fees; 2) what effect a local franchising

incorrectly. We further note that if it is determined that the initial basic service rate has been implemented incorrectly, any refunds ordered are limited to basic-only subscribers. This is because any adjustment to subscribers of both BST and CPST would be revenue neutral and thus no refund to those subscribers would be necessary.

⁶⁷ See, e.g., Comments of Pinehurst, North Carolina at 1; Comments of Shakopee, Minnesota at 1; Comments of Endicott, New York at 1.

⁶⁸ See, e.g., Comments of Lawndale, California at 2; Comments of Winter Springs, Florida at 1-2; Comments of St. Petersburg, Florida; Comments of Hawaii at 3; Comments of Ithaca City Cable Commission at 6-10.

authority's decision to opt out of the lifeline BST provision will have; 3) whether the Commission will review the CPST rate increase that is made to offset the BST price decrease; 4) why the discount is 10% instead of 15% as it was in the *Continental Contract Order*; and 5) whether the Social Contract should contain a date for completion of the restructuring of the BST.⁶⁹

55. In its reply comments, Time Warner contends that a low- priced BST was one of the goals of the 1992 Cable Act and, in connection with the *Continental Contract*, the Commission approved that goal and its implementation with minimal cross-subsidization (between CPST and BST) in the creation of a lifeline basic tier.⁷⁰ In addition, Time Warner contends that any local franchising authority that does not agree with the creation of a lifeline BST may opt-out of this provision of the Social Contract.⁷¹ Time Warner also contends that its right to determine the channels that it will include on the BST, other than must-carry stations, PEG access stations, and television broadcast stations except for superstations has been upheld by the Commission and the Court of Appeals for the District of Columbia Circuit.⁷² Time Warner states that a local franchising authority's decision to opt-out will alleviate the need to offset a BST rate reduction with a CPST rate increase, but otherwise will not affect the terms of the Social Contract. Finally, Time Warner explains that services retiered from the BST will not be unregulated, except for those services that are placed on an MPT in systems which are eligible for a new MPT under the Social Contract, and that all communities which do not opt out will receive the 10% rate reduction during the term of the Social Contract.⁷³

(iii) Discussion

56. In the *Continental Contract Order*, we approved the creation of a lifeline BST noting that there were strong social benefits to the creation of a lifeline BST that furthered the goals of the 1992 Cable Act. In particular, we noted that the creation of a lifeline BST

⁶⁹ See, e.g., Comments of Hawaii at 3; Comments of Jacksonville, North Carolina at 2-3; Comments of the Community Broadcasters Association; Comments of Hillsboro County, Florida at 4; Comments of Los Angeles at 2, 4; Comments of New Jersey State Board of Public Utilities at 7.

⁷⁰ Time Warner Reply Comments at 20-21.

⁷¹ *Id.* at 21.

⁷² *Id.* at 22-23, citing *Time Warner Entertainment Company v. FCC*, 56 F. 3d 151, 162 (1995).

⁷³ *Id.* at 23-25.

increases the option of consumers and increases competition for services on the upper tiers.⁷⁴ We also noted our belief that any increase in rates for subscribers that receive both the BST and the CPST will be de minimis.⁷⁵ We find that the same circumstances exist here and thus approve the similar provision in the Time Warner Social Contract. In view of the valuable public benefits brought by the creation of a lifeline BST, as well as the other benefits of the Social Contract discussed elsewhere in this Order, the preference for other benefits cited by the Ithaca City Cable Commission in the Social Contract does not warrant a rejection of the Social Contract. One of the main arguments advanced by commenters opposing the lifeline BST was that it was not necessary because there were so few BST-only subscribers. However, because there are few BST-only subscribers the overall impact on the majority of subscribers who receive both BST and CPST will be minimal.⁷⁶ In addition, we note that the Social Contract contains a provision that allows local franchising authorities to elect not to have Time Warner implement the BST rate reduction and corresponding CPST adjustment in its franchise area. This provision provides subscribers additional protection if lifeline BST is inadvisable in a particular area.

57. Because some Time Warner systems contain only one tier, not all of the Time Warner systems can immediately provide for a lifeline BST. However, Time Warner has represented that those systems that initially are not given the benefit of a 10% reduction will subsequently be restructured and will have the right to a per channel rate reduction after the restructuring is accomplished.⁷⁷ Because the restructuring is likely to include the upgrading of Time Warner's facilities, we find that a requirement to complete the restructuring by a specific date prior to the termination of the Social Contract would be inconsistent with the Social Contract, which permits Time Warner to upgrade its facilities over the five-year term of the Social Contract. We thus reject the suggestion that the Social Contract contain a date for completion of the restructuring of the BST. We also note that while the restructuring will require Time Warner to shift programming between the BST and the CPST, Time Warner already has that right and can exercise it independent of the Social Contract.⁷⁸ Likewise, Time Warner has the discretion, independent of the Social Contract, not to increase the number of BST channels. We believe that allowing Time Warner to add more channels to the BST, and subsequently increase rates, is contrary to the purpose of creating a lifeline service. Thus, we reject the suggestion by some commenters that these provisions in the Social Contract require modification. However, in order to alleviate some of the concerns raised by the commenters, Time Warner has agreed to modify the Social Contract to ensure

⁷⁴ *Continental Contract Order* at ¶ 48.

⁷⁵ *Id.* at ¶ 47.

⁷⁶ *See e.g.* Comments of Lawndale, California at 2.

⁷⁷ *See* Time Warner Reply Comments at 24-25; Social Contract, Section III.A.

⁷⁸ *Time Warner Entertainment Company v. FCC*, 56 F.3d 151, 162 (1995).

that any restructuring (other than for the creation of MPTs) will not result in the shifting of channels from the BST to unregulated tiers. Further, while we note the argument of the New Jersey Board of Public Utilities that a reduction in the BST will reduce franchise fees under New Jersey law, we point out that Time Warner has agreed to waive its right to a credit for the franchise fee paid to a local franchising authority on CPST refund amounts. If a local franchising authority wishes to preserve its rights under New Jersey law to a franchise fee for a more expensive BST, it has the right to opt out of the lifeline BST provision.

58. Finally, we address the effect on the Social Contract of an local franchising authority's decision not to elect the lifeline BST provision. The only effect a local franchising authority's decision to opt out of the lifeline provision is that there will be no reduction in the BST and no offsetting CPST rate increase. For purposes of clarification, Time Warner has agreed to modify the Social Contract to specifically state that the opt-out provision contained in the Social Contract is limited to local franchising authorities opting out of the creation of a BST lifeline tier.

e. Migrated Product Tier

(i) Terms of the Social Contract

59. The Social Contract provides that in the Time Warner systems where Time Warner or its predecessors did not create a la carte packages, Time Warner will be permitted to migrate up to four existing services from its cable programming services tier to an MPT. The channels migrated from the BST or CPST will continue to be priced at the rate regulated price, subject to increases allowed for inflation and external costs under the Commission's rules. There will be no limitation on the number of new channels that Time Warner may add to an MPT at a price of up to \$.20 cents per channel plus license fees. After April 1, 1997, Time Warner may convert the MPT into an NPT as defined by the Commission's *Going Forward* rules. The Social Contract provides that Time Warner may not require the subscription to any tier other than the BST as a condition for subscribing to an MPT, and may not require subscription to an MPT as a condition for subscribing to a CPST. Time Warner also may not offer an NPT with a buy-through requirement of any tier other than the BST.

60. For the Newhouse Systems that had a la carte packages, Time Warner will be permitted to create two MPTs. One MPT will consist of typically three superstations and one satellite channel and will initially be priced at its current rate, the average price of which is less than 29 cents per channel (exclusive of copyright fees). Time Warner also will be allowed to create an MPT consisting of channels currently located in a la carte packages, so that the total number of migrated services is no greater than six. These channels will be priced at the current per channel rate. (Newhouse's non-superstation a la carte packages were affirmatively marketed and had traditionally low penetration rates, ranging from 26% to 59% of BST subscribers). Time Warner will be able to add an unlimited number of new channel offerings at the rate of up to \$.20 cents per channel plus license fees to these MPTs as well. The remaining channels that had been offered in a la carte packages on Newhouse Systems

will be returned to CPSTs. The rates for CPSTs will increase due to the addition of these channels; however, the increases will be limited to up to \$0.25 per channel.

61. In systems where Time Warner has created a la carte packages that are being treated as NPTs in areas contiguous with franchises where MPTs will be created pursuant to the Social Contract, Time Warner will be permitted to lower the prices of the NPTs and raise the prices of the adjacent MPTs in a revenue neutral manner to provide uniform rates for uniform offerings in those systems. In those circumstances, the NPTs will be subject to the price caps applicable to the MPTs under the Social Contract (i.e. prior to April 1, 1997, the price may be adjusted solely to reflect unrecovered inflation and external cost increases).

(ii) Comments

62. The majority of comments on these provisions raised questions and requests for clarifications. The questions raised included: how many channels Time Warner is allowed to move to MPTs; how many MPTs can be created; and what the effect will be on rates in the regulated tiers. In addition, as to subscribers to the Newhouse Systems, a question was raised as to whether the provision in the Social Contract allowing for price uniformity in contiguous Time Warner and Newhouse Systems will lead to excessive rate increases.⁷⁹ Other commenters contended that channels should not be removed from the regulated tiers, but just duplicated. Commenters urged that a la carte channels created between April 1993 and September 1994 by Newhouse which had previously been marketed as a separate tier and are not required to be returned to a CPST should be subject to anti-buy-through and price restriction rules. Some commenters proposed that there should be specific requirements as to the number of packages of channels on non-BSTs and that there be a uniform rate schedule and channel line-up throughout the Charlotte-Mecklenburg community. Finally, there were comments which misperceived the meaning of the Social Contract.⁸⁰ In its reply comments, Time Warner notes that a total of only four channels may be migrated from both the BST and CPST, that the rate for any regulated tier from which the channels are taken to create an MPT will be proportionally reduced so that the creation of any MPT will be done in a revenue-neutral manner to Time Warner, and that the Commission recognized in the *Cost Order* that the rate-regulated services will provide competition for new services offered under social contracts.⁸¹

(iii) Discussion

⁷⁹ See, e.g., Comments of the City of St. Petersburg; Comments of the Southwestern Suburban Cable Commission at 2; Comments of the New York State Commission on Cable Television at 10.

⁸⁰ See, e.g., Comments of New York State Commission on Cable Television at 9-10; Comments of St. Petersburg, Florida; Comments of Judith L. Kasper at 3; Comments of Lyndl Marshall; Comments of Charlotte, North Carolina.

⁸¹ Time Warner Reply Comments at 50.

63. In the *Continental Contract Order*, which contained provisions similar to those in the *Social Contract*, we waived the channel migration provisions of the *Cost Order* and the *Going Forward Order* to the extent that they prohibited the migration of up to four existing services from its cable programming services to an MPT.⁸² We found that a waiver was in the public interest in the context of the *Continental Contract* because the creation of MPTs and NPTs expands the programming choices for subscribers.⁸³ We believe that the public interest also will be served and that a similar waiver of the channel migration provisions of these orders is appropriate in the context of the *Social Contract*. Except in the case of the *Newhouse Systems*, only four channels can be migrated to a MPT, whether the channels are migrated from the BST, the CPST, or a combination of both. Further, the *Social Contract* provides that only one MPT per franchise area can be created, except in a limited number of *Newhouse Systems* where there will be superstation tiers⁸⁴ and a second package containing such number of channels as brings the total number of channels on MPTs in the franchise area to six, offered as separate MPTs.⁸⁵ Similar to the *Continental Contract*, pricing for the MPT may be increased only if Time Warner adds additional channels to the tier. Like the *Continental Contract*, the *Social Contract* also provides that if Time Warner elects to convert the MPT to an NPT, the elimination of all buy-through requirements will ensure that the product offerings and rates on the NPT are competitive with the regulated BSTs and CPSTs. Thus, the MPT option will increase customer choice while maintaining reasonable rates, and warrants our authorization. We do not believe that we should prescribe what channels should be in the MPTs, since this might require Time Warner to engage in services that are not economically feasible. In response to the New York State Commission on Cable Television, we clarify that any a la carte packages created on *Newhouse Systems* between April 1, 1993 and September 30, 1994, from which no channels are required to be returned to a CPST, are MPTs for the purpose of the anti-buy-through and price constraining provisions. Finally, under the *Social Contract*, any adjustments between contiguous Time Warner systems and *Newhouse Systems* must be accomplished on a revenue neutral basis.

64. We conclude that the provisions in the *Social Contract* that allow for the creation of MPTs will bring benefits to subscribers. However, for purposes of clarification, and to alleviate the concern raised that the creation of MPTs will increase the prices of the regulated tiers, Time Warner has agreed to a provision in the *Social Contract* that states that the rates for any BST or CPST from which channels are moved to create MPTs shall be reduced so that the creation of any such MPT will be revenue neutral to Time Warner.

f. Service To Schools

⁸² *Continental Contract Order* at ¶ 65.

⁸³ *Id.*

⁸⁴ A superstation tier is a tier consisting of low-priced offerings, containing primarily superstations, at an average price of less than \$0.29 per channel, excluding copyright fees.

⁸⁵ See *Social Contract*, Section III.D1-3, 5.

(i) Terms of the Social Contract

65. Under the Social Contract, Time Warner has agreed to provide a cable connection free of charge to all public schools in its franchise areas that are passed by Time Warner systems. Time Warner also will provide a cable connection at cost to all secondary private schools having students that receive funding under Title I of the Education and Secondary School Act of 1965 and that are passed by Time Warner systems. BST and CPST cable service will be provided to all connected public and private schools without cost. Time Warner will wire additional classrooms in existing schools at cost, and provide BST and CPST service to each such outlet free of charge. With respect to new public schools and existing public schools undergoing rehabilitation, if Time Warner is notified of new construction or rehabilitation, Time Warner will coordinate with local officials and contractors to wire each of the classrooms in the new or rehabilitated public schools free of charge.

66. Time Warner also will provide a free monthly educational program listing to each connected school and will provide materials explaining the educational applications of Time Warner's broadband cable systems. Each school district will receive one copy of the materials free of charge with the opportunity to purchase additional copies at cost.

67. Time Warner will provide each connected school with a free connection to the Time Warner/Time Inc. on-line service for personal computers, assuming this service is successfully developed. If requested, each school will receive one free modem to use this service with additional modems provided at cost. Time Warner also will sponsor a workshop in each franchise area to demonstrate the service and its educational uses to teachers.

(ii) Comments

68. The majority of comments support this provision of the Social Contract because the schools need advanced tools to enable their students to compete in a technological world, and these technological tools can help equalize the gap between affluent and less affluent schools.⁸⁶ The Orange County Public Schools state that they would greatly benefit from the Social Contract, commenting that of "special interest to our educators are the educational materials, educational programs and the future on-line computer service, all of which will enable our teachers and students to keep current with the latest information and technology."⁸⁷ The Spring Independent School District, Houston, Texas, praises Time Warner's commitment to supporting the educational process as shown by its "efforts in providing free installation and cable services for educational use in their 'Cable for the Classroom' project" and further

⁸⁶ See, e.g., Comments of Palm Bay, Florida at 1; Comments of New Ulm, Minnesota at 1; Comments of Greater Johnstown School District at 1.

⁸⁷ Comments of Orange County Public Schools at 1.

comments that the additional services such as on-line computer services and technical training are "of tremendous value to our District considering our limited funds."⁸⁸

69. A number of commenters requested that the proposed services be expanded to colleges and universities, private schools, local governments, and schools which are not passed by Time Warner, but are close to Time Warner facilities.⁸⁹ Some commenters contend that the benefits in the Social Contract are already provided under Time Warner's franchise obligations, and that the Social Contract fails to require equipment in schools which has been required by the local franchising authority, such as video distribution amplifiers.⁹⁰ Some commenters claim that Time Warner will only incur minimal costs in providing the school benefits, but will gain through the advertising it will provide.⁹¹ Others comment that these benefits will force schools to spend money on such things as VCRs and maintenance.⁹² Finally, some commenters asked that the schools be permitted to do their own wiring.⁹³

70. In its reply comments, Time Warner acknowledges that many schools already are connected or are planning to be connected pursuant to franchise agreements, but that in many cases these connections are a new benefit to the schools. Time Warner further states that the Social Contract provides additional benefits not typically contained in the school service clauses of franchising agreements, such as internal wiring at cost, connections to certain private schools, educational training for teachers, program guides, on-line service, and modems.⁹⁴

(iii) Discussion

71. We believe that the school services to be provided by Time Warner are a significant provision of the Social Contract. While the Social Contract cannot, and is not

⁸⁸ Comments of Spring Independent School District at 1.

⁸⁹ *See, e.g.*, Comments of Cable Television Review Commission of the County of San Diego, California at 4-5; Comments of Wadsworth, Ohio at 3-4; Comments of Brookville, Florida at 1.

⁹⁰ *See, e.g.*, Comments of Monroe, North Carolina at 5; Comments of Tompkins County Intermunicipal Cable Commission at 1; Comments of Cable Television Review Commission of the County of San Diego, California at 5-6.

⁹¹ *See, e.g.*, Comments of Donald R. LeBlanc at 1.

⁹² *See, e.g.*, Comments of Maureen R. Cregg at 1.

⁹³ *See, e.g.*, Comments of Greenfield, Wisconsin.

⁹⁴ Time Warner Reply Comments at 18.

intended to, provide benefits to every institution that desires them (e.g., universities and hospitals) we note that it does bring new and improved educational opportunities to public and private schools. We note that the cost to Time Warner of these services will be borne by Time Warner, and is not included within the \$4 billion upgrade cost that forms the basis for the rate increases authorized under this Social Contract. These benefits will be provided across the economic spectrum, helping many schools that otherwise could not access the "information superhighway." We believe that the benefits to the schools are significant even if the schools incur certain secondary costs, such as televisions, VCRs, or maintenance. While we cannot be certain what these costs would be, we note that the schools have the option to accept or reject the benefits being offered by Time Warner and can decide whether or not they should expend any necessary funds.

72. Despite the significant benefits these provisions will provide to students, we are mindful of some of the concerns expressed by some commenters and, as a result, have negotiated some modifications to the Social Contract. In particular, as originally drafted, the Social Contract provided that Time Warner would offer service connections free of charge at one outlet in 100% of the public schools passed by its cable systems and at cost to any private secondary school which receives funding pursuant to Title I of the Elementary and Secondary Education Act and which are passed by its cable systems. In response to requests by commenters that connections be provided to schools which are close to Time Warner facilities, Time Warner agreed to offer free of charge service connections in 100% of public schools and at cost connections to any private secondary school which receives funding pursuant to Title I of the Elementary and Secondary Education Act which are located within 200 feet of the activated plant of its cable systems and are within its service area. In making this modification, Time Warner relied upon the definition of "Standard" installation provided under Section 76.309(c)(2)(i) of the Commission's regulations which defines a "Standard" installation as "those that are located up to 125 feet from the existing distribution system." Time Warner extended the range to 200 feet of its activated plant. Time Warner further agreed to provide such connections at cost to any other public or private schools located beyond 200 feet from its activated plant and within its franchised service areas. In addition, we agree that schools, like the subscribers themselves, should have the option to do their own wiring. Time Warner has agreed to this request and has modified the Social Contract to state that any such public or private school may elect to install its own internal wiring at its own cost.

73. Some commenters raised concerns that the Social Contract fails to provide some of the benefits already provided under certain Time Warner franchise obligations. We wish to clarify that the Social Contract is not intended to affect any agreements that a franchising authority has otherwise obtained from Time Warner. To make this clear, Time Warner has agreed to modify the Social Contract to state that "[n]othing herein shall affect the enforceability of any otherwise valid preexisting local franchise agreement, ordinance, local law or regulation which provides benefits which exceed those provided in this Contract relating to system upgrades or the wiring of schools, nor shall local franchising authorities be restricted in their authority to negotiate for such additional benefits after the Effective Date of this Contract." Further, the Social Contract provides that to the extent a local franchise

agreement contains an obligation to provide connections to schools as agreed to in the Social Contract, Time Warner cannot seek to recover any such costs for these connections as external or other costs. Accordingly, any school benefits obtained outside of this Social Contract will not be affected.

g. Home Wiring

(i) Terms of the Social Contract

74. Under the Social Contract, Time Warner will not restrict the ability of a subscriber to remove, to replace, to rearrange, or to maintain any cable wiring located within the interior of a his or her dwelling as long as these actions do not interfere with the ability of Time Warner to collect revenues from that subscriber or any other adjacent subscribers. Subscribers will be responsible for the cost of remedying any improper installation resulting in a violation of the Commission rules. Time Warner will provide high quality home wiring and materials at cost to its subscribers.

(ii) Comments

75. Some commenters claim that the home wiring provision in the Social Contract merely restates the Commission's preexisting rules.⁹⁵ Other comments relate to the fact that the Social Contract does not specifically extend the subscriber's rights to cable located at least twelve inches outside the subscriber's dwelling; a misconception that there has been a total deregulation of inside wiring and thus no need for the Social Contract provision; a question as to the ownership of the wiring and whether Time Warner has maintenance obligations if the subscriber does not maintain the home wiring.⁹⁶ In its reply comments, Time Warner claims that the Social Contract goes further than the Commission's rules because, unlike the Commission's rules, the contractual provisions here apply before a customer terminates cable service.⁹⁷

(iii) Discussion

76. Contrary to the claims of some commenters, the home wiring provision of the Social Contract does not merely restate our existing rules, but rather goes beyond those rules to cover situations prior to the time a customer terminates its cable service. However, the provision does not exempt Time Warner from these rules; therefore, those rules continue to be applicable to cable wiring located at least twelve inches outside the subscriber's dwelling.

⁹⁵ See, e.g., Comments of Greenfield, Wisconsin at 1.

⁹⁶ See, e.g., Comments of Liberty Cable Company, Inc. at 4; Comments of New Jersey State Board of Public Utilities at 9; Comments of Jim and Maureen Watson at 3.

⁹⁷ Time Warner Reply Comments at 8.

While telephone rate regulation of inside wiring has been terminated, our cable home wiring rules have not been eliminated.⁹⁸ We find that the home wiring provisions of the Social Contract provide a benefit to subscribers as the provisions enable subscribers to change the location of their cable without incurring additional costs. Further, the provisions provide that Time Warner will inform the customers of their rights to remove, to replace, to rearrange, or to maintain home wiring, as well as their obligations if signal leakage occurs as a result of their installation or rearrangement. This education process will be a public benefit since it will enable customers to make rational choices whether to install or to rearrange home wiring.

h. System Acquisitions and Divestitures

(i) Terms of the Social Contract

77. Time Warner has a pending contract to acquire cable systems from Cablevision Industries Corporation (CVI).⁹⁹ The Social Contract provides that at its option, Time Warner may include any cable systems acquired from CVI, provided that the CPST settlement provisions of the Contract will not apply until any applicable settlements are mutually agreed upon between Time Warner and the Commission. The Social Contract further provides that the addition of any other newly acquired systems by Time Warner to the provisions of the Social Contract will be subject to Commission approval, which will be expeditiously decided and not unreasonably withheld. Finally, in the event of a sale of any system during the period of the Social Contract, the purchaser may elect, with the concurrence of the Commission, for the provisions of the Social Contract to continue to apply to such systems and the Commission's concurrence shall be expeditiously decided and not unreasonably withheld. In the event the purchaser elects not to have the provisions of the Social Contract apply to any such system, the CPST subscribers to such system shall be eligible for the refunds calculated under the Social Contract in the event the upgrade commitment has not been completed prior to the consummation of such sale.

(ii) Comments

⁹⁸ 47 C.F.R. § 76.802.

⁹⁹ CVI has forwarded to the Commission a separate Proposed Resolution to settle complaints relating to rates charged by CVI for the period from September 30, 1993 through July 14, 1994. This Proposed Resolution is independent of the Social Contract. On October 30, 1995, the Commission approved the release of the draft Proposed Resolution for public comment. The comment period ends on December 4, 1995. *Cablevision Industries, Inc.*, FCC 95-444 (Cab. Serv. Bur., released October 30, 1995).

78. The comments regarding this provision were from communities served by CVI, contending that they should be part of the Social Contract.¹⁰⁰ In addition, the City of Los Angeles contends that it should not have to comment on this issue until the acquisition of CVI is finalized, but that CVI systems should not be added to the Social Contract without the consent of the local franchising authority.¹⁰¹ In its reply comments, Time Warner stated that it has no objection to including CVI communities as part of the Social Contract.¹⁰²

(iii) Discussion

79. In view of the desire of franchising authorities (with the exception of Los Angeles) of CVI systems to be included in the Social Contract and Time Warner's agreement to include all CVI systems in the Social Contract, we find that the inclusion of such systems is in the public interest. The Social Contract is thus modified to state that Time Warner shall include any cable systems acquired from CVI within the provisions of the Social Contract. In addition a provision in the Social Contract has been added providing for 45 days' notice of the Social Contract to the affected local franchising authorities in order to provide them with an opportunity to opt out of the lifeline BST provision of the Social Contract.

80. Because the upgrade capital costs committed by Time Warner in the Social Contract are tied to the systems it currently owns, any such acquisition or divestiture of systems by Time Warner, as provided for under this section, could change the amount of capital costs expended for the upgrade. As part of our oversight responsibilities with respect to the Social Contract, a provision in the Social Contract has been added that states that the upgrade capital costs set forth in the Social Contract will be adjusted, as mutually agreed to by Time Warner and the Commission, to reflect any additions or deletion of systems subject to the Social Contract. To address the parties' desire to have the required review and approval of additions and deletions of smaller systems accomplished expeditiously, the Social Contract further provides that the approval from the Commission of such adjustments shall be expeditiously decided and not be unreasonably withheld. In view of the fact that these capital commitment decisions must be made expeditiously and involve a thorough examination of the upgrade plan, we believe that, with respect to acquisitions or dispositions of cable assets involving 400,000 or fewer subscribers, the Cable Services Bureau is in the best position to take any actions contemplated under section III F. 6 of the Social Contract, including approval or disapproval of additions or deletions from the provisions of the Social Contract and the adjustments in the monetary amount of the upgrade which results from such additions or deletions as well as any other actions contemplated under this section. Therefore, on our own

¹⁰⁰ See, e.g., Comments of Portland, Maine at 2; Comments of St. Petersburg, Florida; Comments of Oxford, Ohio at 1; Comments of Tompkins County Intermunicipal Cable Commission at 2; Sharon Cable TV Oversight Committee at 1.

¹⁰¹ Comments of Los Angeles, California at 2, 8-9.

¹⁰² *Id.* at 53.

motion, we order that the Cable Services Bureau be given delegated authority to take any actions contemplated under section III F. 6 of the Social Contract.

i. Modification and Termination

(i) Terms of the Social Contract

81. The Social Contract provides that it may not be modified or terminated without the mutual agreement of both parties. Time Warner may petition the Commission to modify or terminate the Social Contract based on any relevant change in applicable laws, regulations, or circumstances. Any petition to modify or terminate this contract will be served on the local franchising authorities for the affected systems. The Commission will allow 30 days after the release of the Public Notice for interested parties to comment and 15 days for reply comments before acting on any such petition.

82. In the event of a material change in the 1992 Cable Act or the Commission rules that would favorably impact Time Warner, any Time Warner system may elect not to be bound by the relevant provisions of the contract addressing the BST price cap (III.A.2), additions to the BST (III.A.3), equipment rates (III.B.), MPTs (III.D.), and the CPST price cap (III.F.4). All other provisions of the Social Contract would remain valid and enforceable.

(ii) Comments

83. Several commenters contend that the provision in the Social Contract permitting Time Warner systems to elect not to be bound by certain sections of the Social Contract is one-sided because it allows Time Warner to terminate the Social Contract unilaterally if any applicable law or regulations change.¹⁰³ Some commenters also contended that the local franchising authorities should have input on any modifications or terminations.¹⁰⁴ In its reply comments, Time Warner contends that this provision relates only to certain rate provisions in the Social Contract, and that notwithstanding any such changes in the law or in regulations, Time Warner still is required to comply with other non-rate provisions and that Time Warner will be subject to the rate regulation rules in effect at that time.¹⁰⁵

(iii) Discussion

84. We believe that the provision in the Social Contract allowing Time Warner to take advantage of any changes in the current rate regulations is both justified and necessary. We are mindful of the pending telecommunications legislation and the reality that we could

¹⁰³ See, e.g., Comments of Lawndale, California at 5; Comments of Los Angeles, California at 10.

¹⁰⁴ See, e.g., Comments of Los Angeles, California at 10.

¹⁰⁵ Time Warner Reply Comments at 48.

not reasonably expect Time Warner to agree to comply with existing rate regulations in the event they are eliminated. Thus, under the Social Contract, Time Warner, similar to all other cable operators, will be able to take advantage of any changes in either the 1992 Cable Act or the Commission's regulations with respect to the rate provisions in the Social Contract, i.e. Time Warner will be subject to whatever rate regulation is in effect at that time. However, even if the statutory or regulatory provisions concerning rate regulation change, Time Warner is not relieved of any other provisions in the Social Contract. We retain our oversight authority with respect to these non-rate provisions and do not believe further review by local franchising authorities is necessary.

j. Preemption

(i) Terms of the Social Contract

85. The Social Contract provides that to the extent that any state or local law, regulation, ordinance, or franchise is inconsistent with the terms of the Social Contract, the Social Contract preempts those requirements. Additionally, the Social Contract provides that all waivers of the Commission's rules and modifications to the Commission forms necessary to effectuate the terms of the Social Contract are granted. The Social Contract does not preempt the right of local franchising authorities to negotiate upgrades which exceed the scope of the Social Contract.

(ii) Comments

86. Many local franchising authorities argue that the Social Contract contains language which could be interpreted as precluding them from requiring that Time Warner adhere to the conditions imposed in franchising agreements or from imposing certain conditions in future franchising agreements.¹⁰⁶ In its reply comments, Time Warner contends that the language does not preclude any local franchising authority from negotiating with Time Warner for a higher level of upgrades.¹⁰⁷

(iii) Discussion

87. In view of the concerns raised by many local franchising authorities, Time Warner has agreed to a modification to the Social Contract that limits the scope of the preemption. In particular, the Social Contract only preempts the local franchising authority from regulating rates or ordering refunds in a manner inconsistent with its terms. As stated in Section III. I. 2. a. of the Social Contract, the provision added specifically affirms the enforceability of any "otherwise valid preexisting local franchise agreement, ordinance, local law or regulation which provides benefits which exceed those provided in this Contract relating to system

¹⁰⁶ See, e.g., Comments of St. Petersburg, Florida; Comments of Hawaii at 2; Comments of Portland, Maine at 2.

¹⁰⁷ Time Warner Reply Comments at 45.

upgrades or the wiring of schools, nor shall [local franchising authorities] be restricted in their authority to negotiate for such additional benefits after the Effective Date of this Contract." We believe this language sufficiently addresses the concerns raised by various local franchising authorities as it clarifies that the Social Contract is not intended to preempt any preexisting or future franchising agreement that provides for a different or higher level of upgrades or benefits.

k. Other Issues

(i) Comments

88. A variety of other issues and questions were raised by commenters. Among the issues raised are that (1) the comment period was too short; (2) the Commission has abdicated its oversight responsibilities over the cable monopoly; (3) local franchising authorities should be permitted to deny franchise renewals for failure to comply with the Social Contract; and (4) the Commission should address the issue of scrambling. Further, a number of comments discuss matters related to Time Warner's behavior in particular communities including claims of unfair competition and discrimination.¹⁰⁸ In its reply comments, Time Warner did not respond to all of these issues, but did contend that it is subject to an increasing amount of competition and that the Commission has ample power to enforce the Social Contract without further harsh penalties being added by local franchising authorities.¹⁰⁹

(ii) Discussion

89. We have allowed almost two months for comments and reply comments on the Time Warner Social Contract.¹¹⁰ It is our view that this period of time correctly balances the need for public comment with the need to make the public benefits of the Social Contract available as soon as possible. One of the main goals of the 1992 Cable Act is to protect the interests of subscribers.¹¹¹ Comments that we have abdicated our oversight responsibilities over Time Warner are without support. To the contrary, the Social Contract is a regulatory mechanism expressly provided for in our rules for cable systems not subject to effective competition. Moreover, under the Social Contract, we have retained oversight responsibilities for Time Warner's compliance with the Social Contract. We believe that the goals of the

¹⁰⁸ See, e.g., Comments of Elliott Becker, Comments of Liberty Cable Company, Comments of Paul E. Champagne.

¹⁰⁹ Time Warner Reply Comments at 46.

¹¹⁰ We have considered reply comments, such as those filed by the New York City Department of Information and Technology and Telecommunications, which essentially oppose the Social Contract and could have been filed as initial comments.

¹¹¹ *Rate Order*, 8 FCC Rcd at 5639.

1992 Cable Act are being met in this Social Contract. The Social Contract provides reasonable, stable rates to subscribers, as well as various social benefits.

90. We find that the Social Contract provides remedies for violations, and, thus, further enforcement procedures by local franchising authorities are not necessary. We note that the Social Contract provides that each local franchising authority will be served with progress reports no later than 90 days following the end of each calendar year that the Social Contract is in effect. The Social Contract provides that any violation of its terms shall be treated as a violation of a Commission order with the corresponding rights and remedies associated with the enforcement of an order. Time Warner will report to the Commission on an annual basis within 90 days following the end of each calendar year of the Social Contract. This report will detail the number of BST and CPST subscribers benefitting from upgraded service, the system reliability and service improvements resulting from the upgrade, and the projected upgrade activities for the following year. This report will be served on each local franchising authority. To verify the accuracy of these reports and ensure compliance, the Commission reserves the right to inspect the books and records of Time Warner and to interview corporate employees.

91. To the extent that local franchising authorities or other interested parties disagree with Time Warner's interpretation of any provision of the Social Contract, perceive a lack of enforcement of its terms and conditions, or disagree with the remedies we may prescribe, they may seek redress at the Commission. Further, the Social Contract is not intended to resolve every conceivable issue raised with respect to Time Warner's service and operations. There are other avenues available to address concerns regarding such matters as scrambling, alleged discriminatory treatment by Time Warner of its competitors, poor service, billing problems and other disputes with complainants.

IV. CONCLUSION

92. The Social Contract negotiated with Time Warner fulfills the objectives of the Incentive Upgrade Plans which were established in the *Cost Order*. The Social Contract ensures that customers will have reasonable, stable rates for existing services. Additionally, Time Warner will obtain pricing flexibility to upgrade its system in cost effective ways in order to provide customers with increased programming choices and improved quality of service. Furthermore, the Social Contract will reduce the regulatory burdens associated with rate regulation on local franchising authorities, Time Warner, and the Commission.

93. It is our belief that by approving the Upgrade Incentive Plan we encourage upgrades that provide services that are economically justified and that best meet customers' needs. Therefore, we find this plan, to the extent modified above, to be in the public interest and approve the agreement.

94. Accordingly, IT IS ORDERED that the Social Contract between Time Warner and the Commission as modified above IS APPROVED.

95. IT IS FURTHER ORDERED that there is a general waiver of any Commission rule that is necessary to effectuate the terms of this Social Contract including, but are not limited, to the following rules: 47 C.F.R. § 76.923; 47 C.F.R. § 76.987; 47 C.F.R. § 76.961(e); 47 C.F.R. §§ 76.309(c)(i)(B), 76.964; 47 C.F.R. § 76.960; 47 C.F.R. § 76.933; 47 C.F.R. § 76.922; 47 C.F.R. § 76.956.

96. IT IS FURTHER ORDERED that waiver of any Commission rule or modifications to the Commission's forms necessary to effectuate the terms of the Social Contract IS GRANTED.

97. IT IS FURTHER ORDERED that the Cable Services Bureau is given delegated authority to oversee implementation of the Social Contract, including authority to resolve all pending complaints covered by the Social Contract and to make adjustments in the amount of Time Warner's upgrade commitment on additions or deletions of systems subject to the Social Contract.

98. IT IS FURTHER ORDERED that preemption of any local franchise agreement or any state or local rule or regulation that requires Time Warner to give more than 30 days' notice of rate and service changes to subscribers for the period prior to January 1, 1996, IS GRANTED.

99. IT IS FURTHER ORDERED that the Secretary is instructed to sign the Social Contract, attached as Appendix B, on behalf of the Commission.

100. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A: Comments Expressing Unqualified Support of Time Warner Social Contract

Alabama

City of Irondale

Birmingham Public Schools

City of Brighton

City of Bessemer

Alabama Public Service Commission

City of Birmingham

California

Cathedral City

Coronado High School

San Bernardino

Councilmember Barbara Warden, San Diego

Assemblywoman Dede Alpert

San Diego County Office of Education

International Center for Communications, San Diego

San Diego Business Roundtable for Education

City of Barstow

Congressman Brian R. Bilbray

Poway Unified School District

San Diego City Schools

City of Palm Springs

Assemblywoman Susan A. Davis

City of Coronado

Coronado Unified School District

Jean Farb Middle School, San Diego

Kern County

San Diego State University

Councilmember Randy Rowles, Bakersfield

Steve A. Perez, Bakersfield

Dianne Jacob, Chairwoman, San Diego County Board of Supervisors

San Diego Councilmember Harry Mathis

James W. Silva, Supervisor, Second District, Orange County

Connecticut

Cable Television Advisory Council

Florida

National Development Properties of Florida-Bay, Inc.

Representative John Morrone

Town of Melbourne Beach

Representative R.Z. Safley

School Board of Polk County

Manatee County

Jaymie G. Carter

City of Belleair Bluffs

City of Temple Terrace

Polk Education Foundation & Business Partnership, Inc.

Brevard County

Town of Indian Shores

Town of Lake Hamilton

School District of Hillsborough County

City of Auburndale

School Board of Manatee County

Representative Dennis L. Jones

City of Treasure Island

City of Palm Bay

Pittsburgh Baseball Club, Florida Baseball Operations

Barnett Bank of Manatee County

Hillsborough Education Foundation, Inc

City of St. Pete Beach

City of Crystal River

City of Bradenton

City of Largo

Town of Malabar

School Board of Manatee County

City of Bradenton Beach

Lake County Information Services

City of Cocoa Beach

County Commissioner Joe McClash

City of Melbourne

City of Maitland

State Senator David G. Kelley

City of Rockledge

City of Edgewood

State Senator Donald C. Sullivan

Dave & Lynn McDaniel

Eastside Elementary School, Haines City

Osceola High School, Seminole

Tamara L. Hager

Oak Grove Middle School

City of Lakeland

School Board of Brevard County

Hillsboro Public Schools

City of Winter Park

Orange County Public Schools

Faye C. Roberts, Columbia County Public Library

Polk County

Richard Fawley

Georgia

The Travel Channel

Illinois

City of Berwyn

Ronald F. Crick

Village of Tinley Park

Village of Stickney

Indiana

HOLA, Indianapolis

Indianapolis Chamber of Commerce

Indianapolis Urban League

William G. Mays, Mays Chemical Company

Kinder Vision, Peru

Congressman Dan Burton

Indianapolis Public Schools

Kentucky

Tommy Sanders

Dr. Robert H. McGaughey, Murray State University

Louisiana

Caddo Parish School Board

Caddo Parish Commission

St. John the Baptist Parish

Ouachita Parish School System

Monroe City Schools

Maine

Congressman John E. Baldacci-

Suzan Nelson, Librarian, Portland High School

Donna Crook, Computer Technology Steering Committee, Portland High School

Maryland

Discovery Communications, Inc.

Massachusetts

City of Melrose

City of Medford

Lynn Business/Education Foundation

Swampscott Public Schools

Lynn Business Partnership

Salem Public Schools

Lynn Public Schools

Melrose Chamber of Commerce

Central Berkshire Regional School District

Patrick J. Markham, Pittsfield Public Schools

City of Pittsfield

Minnesota

City of Shakopee

City of Chaska

City of New Ulm

Bloomington Chamber of Commerce

Richfield Chamber of Commerce

Edina Public Schools

Eden Prairie Chamber of Commerce

Eden Prairie Schools

Minneapolis Public Schools

Minnesota Public Utilities Commission

Jackie Cherryhomes, President, City Council, Minneapolis

Richfield Public Schools

Edina Chamber of Commerce

Greater Minneapolis Chamber of Commerce

State Senator Steve Novak

Susan Ray Euler, Fire Department Hot Spots

City of Ranlo

State Senator Carl W. Kroening

Mississippi

Mississippi Economic Council

Jackson Public School District

Town of Coldwater- Supports Contract, especially rate stability, reduced basic rates, and upgrades.

City of Ridgeland

City of Raymond

Hinds County

City of Senatobia

Madison County

Town of Edwards

Missouri

Ferguson-Berkeley Chamber of Commerce

City of Belton

City of Parkville

Village of Calverton Park

City of Lee's Summit

Nebraska

City of Auburn

City of Lincoln

City of York

City of Nebraska City

City of Superior

Lancaster County

City of Fairbury

New Jersey

Assemblyman Patrick J. Roma

New York

East Syracuse-Minoa Schools

Village of Malone

Village of North Syracuse

Village of Painted Post

Fayetteville-Manlius Schools

Town of Catlin

Town of Camillus

John P. Almonte and Edgar F. Ames, East Syracuse-Minoa Central Schools

A & E Television Networks

Peyton C. Watkins, Penfield

Town of Chili

Town of East Rochester

Town of Ogden

Town of Gates

Village of Endicott

Town of Perinton

Town of Marcellus
Rome City School District
Town of Newark Valley
Town of Kirkwood
ESPN, Inc.
Town of Richmond
Town of Clarendon
City of Corning
City of Port Dickinson
Village of Johnson City
Joni Lincoln, Port Byron Central School District
Town of Parma
Town of Pittsford
Jamesville-DeWitt Central School District
Town of Kirkwood
Town of Conklin
Town of Clifton Park
Board of Cooperative Educational Services of Cattaraugus, Alleghany, Erie and Wyoming
Counties
City of Rochester
Town of Stillwater
Town of Fenton
City of Elmira
Village of Horseheads

Town of Webster-

North Carolina
City of Lexington

Town of Weddington

FTCC Foundation, Inc., Fayetteville

University of North Carolina at Wilmington

Pembroke State University

Cumberland County Schools

Town of Emerald Isle

Moore County Schools

City of Hamlet.

Guilford County

City of High Point

Instructional Technology, Charlotte-Mecklenburg Schools

Centralina Council of Governments-

County of Moore, Department of Social Services

Town of Haw River

Town of Landis

Cleveland County

Carteret County Board of Education

Lumberton Area Chamber of Commerce and Visitors Bureau

Town of Southern Pines

Southeastern University

Town of Rockwell

Public Schools of Robeson County

State Senator Luther H. Jordan, Jr.

Town of Chapel Hill

Shelby City Schools

Asheboro/Randolph Chamber of Commerce & Tourism Bureau

Guilford County Schools

City of Thomasville

City of Winston-Salem

Cleveland County Schools

Town of Cramerton

City of Kings Mountain

City of Burlington

City of Albemarle

Gaston County Schools

Town of Matthews

County of Jones

Cabarrus County

City of Asheboro

Charles F. McCraw, Guilford County Schools

Charles M. Lineberry, Jr.

Town of Ramseur

City of Randleman

John G. Redmond, North Carolina Council on Economic Education

Archdale-Trinity Chamber of Commerce-

City of Shelby

J. Parks Todd, Jr., North Carolina State Board of Community Colleges

Fayetteville Chamber of Commerce

City of Bessemer City

Grennsboro Chamber of Commerce

Ohio

Village of Marble Cliff

Norwood City Schools

WCET, Cincinnati

Museum Center, Cincinnati

Marguerite Shurte

City of Piqua

Municipality of West Milton

Immaculate Heart of Mary School, Cincinnati

Gahanna-Jefferson Public Schools

Rudy Forsberg

Marian A. Spencer

Staff of Canton City School District

Elida Local Schools

Thomas Worthington High School, Worthington

Dick Lehmann, Westerville South High School, Westerville

Learning Materials Center, Rutherford B. Hayes High School, Delaware

Lara Gianessi, Fort Hayes Metropolitan Education Center, Columbus

Village of Obetz

S. Julia Deiters

City of Grandview Heights

Elida Senior High School

City of Akron

City of Columbus

Brenda Jackson, William Henry Harrison Junior School, Harrison

Terrace Guild, Cincinnati

Literacy Network of Greater Cincinnati

Wellness Community, Cincinnati

East End Adult Education Center, Cincinnati

Camilla S. Huff, St. Veronica School, Cincinnati

Green Township

Ansonia Local School District

Newton Local School District

John E. Miller, The Troy Schools

Milton-Union Exempted Village Schools

Covington Exempted Village Schools

City of Bexley

Lima/Allen County Chamber of Commerce

Wendy E. Webb, Youngstown City School District

Eldonna H. Ashley, North Union School District

Miami East Junior High School

City of Akron

West Liberty-Salem Schools

John G. Olds, Northwestern College

Carrie Clark, Playhouse in the Park, Cincinnati

Kids Voting, Cincinnati

All About Kids, Cincinnati

Arts Consortium of Cincinnati

Oregon

Kathy Allen-Kirsch, Gregory Heights Middle School, Portland

Karen Gaddis-Philips, Sam Barlow High School, Gresham

Portland Public Schools

Pennsylvania

City of Reading

Tim Smith, Reading

Reading Area Community College

Alvernia College, Reading

Reading School District

Pottsville Area School District

Blue Mountain School District

Berks County Intermediate Unit

Bellwood-Antis School Board

Moon Community Access Television

Greater Johnstown Committee

BT Financial Corporation

Moon Area School District

Representative Jim Lynch

Representative Richard A. Geist

Richland Senior High School, Johnstown

David Popp, Westmont Hilltop School District, Johnstown

Altoona Area School District

Bradford Cable Commission

United Way of Berks County

Representative Sheila Miller

Pennsylvania State University

Greater Johnstown/Cambria County Chamber of Commerce, Inc.

City of Altoona

Greater Johnstown School District

Franklin Area Chamber of Commerce

Franklin Area School District

Datney Grove School District

Richland School District

Representative Samuel E. Rohrer

Sugarcreek Borough

Valley Grove School District

Berks Community Television

West Lebanon Township

South Carolina

Town of Pinewood

Sumter School District No. 17

City of Darlington

Town of Clover

Sumter County Administrator

City of Florence

Tennessee

Memphis City Schools

Germantown Area Chamber of Commerce

Collierville Area Chamber of Commerce

Randy Houston, First Tennessee Bank, Collierville

Beverly A. Holmgren, First Tennessee Bank, Bartlett

City of Bartlett

City of Lakeland

Bartlett Kiwanis Club

Texas

City of Hunters Creek Village

City of San Antonio

Fort Bend Independent School District

T.H. Rogers School, Houston

Luling Independent School District

City of Elgin

Robinson Independent School District

Houston Councilman John W. Peavy, Jr.

City of Piney Point Village

Missouri City

City of McGregor

City of Round Rock

Cypress-Fairbanks Independent School District

City of Luling

Round Rock Chamber of Commerce

El Paso Independent School District

Greater Austin Chamber of Commerce

City of Meadows

FOX 18, Wichita Falls

Ysleta Independent School District, El Paso

City of Bastrop

Hill Country Village

Town of Hollywood Park-

City of Castle Hills

Greater Houston Partnership

Congressman Bill Archer

City of Selma

City of Helotes

City of Bellmead

St. Paul's Episcopal Day School, Waco

Eanes Independent School District

City of Balcones Heights

City of Kirby

City of Olmos Park

Greater Irving Chamber of Commerce

Councilwoman Cynthia White, Lewisville

City of Cibolo

City of Shavano Park

Spring Independent School District

City of West University Place

Helen S. Handler, Paul Revere Middle School

Elgin Independent School District

City of Converse- Late Filing

Lewisville Chamber of Commerce

Representative Peggy Hamric

City of Waco

Virginia

Greater Irving Chamber of Commerce

Poquoson City Public Schools.

Smithville Independent School District

West Virginia

West Virginia Cable Advisory Board

Wisconsin

Green Bay Area Chamber of Commerce

Action, Menasha

Joseph A. Rice, Milwaukee

Newtec Studio, Green Bay

Whitnall Middle School, Hales Corners

Oshkosh Area School District

Greater Milwaukee Education Trust

School District of Beloit

Marquette University High School

Kaukana, Wisconsin

**SOCIAL CONTRACT FOR
TIME WARNER CABLE**

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SOCIAL CONTRACT FOR TIME WARNER CABLE

I. BACKGROUND AND SUMMARY.

The "Social Contract" set out in this document (the "Contract") relates to certain services and equipment offered by Time Warner Cable ("TWC") actually or potentially subject to regulation under the terms of the applicable provisions of Title VI of the Communications Act of 1934, as amended ("Act").

The Federal Communications Commission ("FCC" or "Commission") finds that this Contract will advance the public interest by: (i) assuring fair and reasonable rates for TWC's cable service customers; (ii) facilitating the creation of a low-cost, lifeline basic service level; (iii) improving TWC's cable service by substantially upgrading the channel capacity and technical reliability of its cable systems; and (iv) reducing the administrative burden and cost of regulation for local governments, the FCC and TWC.

The Contract has been negotiated between TWC and the FCC in accordance with the FCC's authority to consider and adopt "social contracts" as an alternative to other regulatory approaches applicable to cable television rates,^{1/} as modified and amplified in the Order adopting the Continental Social Contract,^{2/} and its authority to regulate TWC's cable services under the Act, particularly in light of the Statement of Policy set forth in Section 2(b) of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 ("1992 Cable Act"). Except as otherwise provided for herein, this Contract covers all of TWC's cable systems as of the Publication Date (as hereinafter

^{1/}Cost of Service Order, 9 FCC Rcd 4527, ¶¶ 295-304 (1994); Public Notice, FCC 95-137 (April 3, 1995).

^{2/}Memorandum Opinion and Order, FCC 95-335 (released August 3, 1995).

defined). Until such time as there is a final decision permitting the transfer of the Laredo, Texas cable television franchise to TWC, this Contract shall not apply to the affected cable system serving Laredo, Texas.

II. DEFINITIONS.

The following terms shall have the meanings set forth below. Certain other terms are defined elsewhere herein.

A. "Basic Service Tier" or "BST" means the cable service level which includes the signals of any local television broadcast stations and any public, educational or governmental access channel required by the relevant franchise to be carried on the BST.

B. "Cable Programming Service Tier" or "CPST" means any tier of video programming service, but shall not include (i) video programming carried on BST; (ii) video programming when offered on a per channel, multiplexed, *a la carte* or per program basis; (iii) any Migrated Product Tier; or (iv) any New Product Tier ("NPT") as defined by the Going Forward Rules and 47 C.F.R. § 76.987.

C. "Cost" means that the prices so designated have been designed to recover actual costs, including a reasonable rate of return as defined in the FCC Cost of Service Order, *supra*, at ¶ 207.

D. "Current Rates" means those TWC system rates that are in effect as of the Publication Date, or rates that will become effective after the Publication Date and for which notice was given to subscribers on or before the Publication Date.

E. "CVI" means Cablevision Industries Inc., its subsidiaries and affiliates.

F. "Effective Date" means the date on which the FCC releases an order approving this Contract.

G. "Eligible Subscribers" means those CPST subscribers to any of TWC's cable systems listed on Appendix A to this Contract at the time Refunds are issued.

H. "Going Forward Rules" means the FCC's rules adopted in the Sixth Order on Reconsideration, 76 RR 2d 859 (1994), including all subsequent clarifications and amendments.

I. "Migrated Product Tier" or "MPT" means (a) a tier consisting of up to four services moved from a system's existing BST or CPST(s) as described in Section III.D.5. or (b) any Superstation Tier or any tier consisting of those services remaining on a Preferred Tier, as defined in Section III.D.1., after any excess channels have been shifted to CPST as described in Section III.D.3.

J. "Publication Date" means the date on which the Commission releases its initial Public Notice relating to this Contract.

K. "Refund" means a prospective bill credit issued to Eligible Subscribers.

L. "Time Warner Cable" or "TWC" means the collective reference to Time Warner Entertainment Company, L.P. ("TWE"), TWI Cable Inc. ("TWI Cable") and Time Warner Entertainment-Advance/Newhouse Partnership ("TWE-A/N"), or any subsidiary, division or affiliate thereof, or, where consistent with the context, any cable system owned or managed by TWE, TWI Cable or TWE-A/N, except where particular provisions of this Contract specify a more limited scope.

III. TERMS AND CONDITIONS OF THE SOCIAL CONTRACT.

A. Basic Service Tier Rate Relief.

1. Creation of a Low-Cost, Lifeline Basic Service Tier.

a. In order to provide its subscribers with the option to purchase a low-cost BST, no later than six months after the Effective Date, TWC will reduce its BST rates on systems serving at least 85% of TWC's total subscribers to a level 10% below the Current Rates. In any system where the BST rates are initially reduced by 10% as described above, but where BST rates are pending review on the Publication Date, TWC will reduce its BST rates further by 10% from the level ultimately determined to be reasonable, after such determination is no longer subject to review or appeal. TWC may increase its CPST rate(s) in any system by an amount necessary to recoup the reduction in revenues due to the 10% adjustment in the BST rate in that system. Such adjustment to CPST rates shall be submitted to the FCC for review. A local franchising authority ("LFA") may elect not to have TWC implement the BST rate reduction and corresponding CPST adjustment described in this paragraph in its franchise area by providing notice to TWC and the Commission no later than 45 days following the Effective Date. Such notice shall (a) be in writing, (b) be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, with a copy to Time Warner Cable, 300 First Stamford Place, Stamford, CT 06902-6732, attention: General Counsel, (c) identify the local franchising authority, the community unit identification number for the franchise area, and (d) reflect the clear intent to not have TWC implement the BST rate reduction described in Section III.A.1.a of this Contract. However, such notice need not meet any other requirements and may be in letter form. An election by a LFA to opt out of the provisions

of this paragraph shall not otherwise affect the applicability of the remaining provisions of this Contract in such community.

b. In order to achieve its goal of creating low-cost BSTs, TWC will restructure the BST on the remaining systems where the BST has not been reduced by 10% as described above so as to create a lifeline-type service. Such restructuring will involve shifting channels from the BST to an existing or newly created CPST (or MPT as permitted by Section III.D.5.) and not to any service level which would not be subject to rate review upon the receipt of a valid complaint under current FCC rules. Such restructuring will not be deemed by the FCC to be a "fundamental change" of any affected service tier. At the time of such restructuring, the BST rate will be reduced by an amount equal to the percentage of the BST channels shifted to CPST. Where the BST channels are shifted to a newly created CPST, the rate for the CPST will be equal to the amount of the reduction in the BST rate. Where the BST channels are shifted to an existing CPST, the rate of the existing CPST will be increased by an amount necessary to recoup the reduction in revenues resulting from the reduction in the BST rate as described above. The 10% BST rate reduction, with CPST offset, will be implemented upon restructuring of such remaining systems. Nothing herein shall be deemed to affect any otherwise enforceable franchise provision relating to programming services to be provided by TWC.

2. BST Price Cap.

After implementation of the 10% BST rate reduction described above, all such reduced BST rates will be subject to a price cap, even in currently unregulated TWC systems. TWC will continue to be permitted to adjust BST rates for changes in external costs and inflation, subject to any necessary LFA approval. The BST rate reduction referred

to above will have no adverse effect on any Form 1210 BST rate adjustment request which may be pending before an LFA as of the Publication Date or thereafter. Nothing herein shall authorize review of the reasonableness of any BST rate adjustments in communities where the LFA has not elected to certify in accordance with Section 76.910 of the Commission's rules.

3. Additions To Basic Service Tier.

TWC shall not add any additional channels to any BST for the term of this Contract, except where required by applicable law, regulation or contract lawfully entered into pursuant to such law or regulation, or to provide additional local origination channels or other non-satellite delivered channels. In the event that the FCC's must-carry rules are repealed or rendered invalid or inapplicable to TWC by a court of competent jurisdiction, TWC will have the right to substitute any programming service not then carried by such system for up to an average (weighted by BST subscribers) of three local television broadcast stations deleted from carriage per system covered by this Contract, but no more than five such substitutions on any given system, even if more than five television broadcast stations are deleted. Such substitutions shall have no impact on BST rates other than due to the net change in programming costs. In the absence of must-carry requirements, however, any local television broadcast stations which TWC continues to carry will be carried on the BST. Any such changes to BST will be made only upon provision of thirty days advance notice to the Commission and to affected LFAs and subscribers. Upon receipt of any necessary LFA approval, TWC will be permitted to implement appropriate BST rate adjustments to reflect any such added or substituted channels. Such adjustments (other than adjustments to BST

required by any retransmission consent agreement) shall not be subject to the annual BST adjustment limitation set forth in Section III.G.1.

B. Equipment Rates.

TWC will be permitted to establish a blended rate, averaged for each of the following equipment basket categories: (1) hourly service charge, (2) installations, (3) remote control devices, (4) non-addressable converters, (5) addressable converters, (6) other leased equipment, and (7) customer tier changes, by geographic region as reflected on Appendix B to this Contract (and any reasonable modifications to such regions). Equipment rates will be adjusted annually to reflect changes in regional equipment Costs in each category. At least thirty days prior to implementation of the first CPST adjustment authorized pursuant to Section III.F.4., but not sooner than December 1, 1995, TWC will submit a single Form 1205, or equivalent reasonably acceptable to the Commission, for each region to the FCC, and will submit annual updates to such filings thereafter for Commission review. Any data required to support such annual equipment rate adjustments may be based on the four most recent available quarterly financial figures. TWC may begin charging revised equipment and installation rates to customers based upon the updated filing upon thirty days' notice. These revised equipment and installation rates will be subject to refund if the Commission later concludes that lower region-wide rates are called for by such filings and applicable rules. Such region-wide equipment and installation charges as TWC establishes and the Commission approves pursuant to this Contract shall be subject to enforcement by local franchising authorities. Should any LFA find that TWC's equipment and installation rates charged exceed those permitted by the Commission, the LFA may order

TWC to make refunds of any excess charges as necessary to comply with the equipment and installation charges permitted by the Commission.

C. Resolution Of Existing CPST Rate Cases.

1. All CPST cases or complaints currently pending before the Commission are resolved pursuant to and as a result of the adoption of this Contract, as set forth in Appendix A to this Contract.

2. The Commission has reviewed TWC's pending CPST filings. In light of its review, the covenants and representations contained in this Contract, and in express reliance thereon, and in order to conserve Commission resources, avoid litigation costs, and achieve the other benefits to the public contained in this Contract, the Commission agrees to resolve all CPST cases and complaints involving TWC currently pending before it.

3. In addition to those CPST rates which are subject to proceedings that are being settled as set forth in Appendix A to this Contract, all other Current Rates, as adjusted for inflation and changes in external costs as of the Publication Date, charged by TWC for CPSTs are deemed reasonable under the Act and the Commission's rules.

4. At such time as TWC makes its first CPST rate adjustment authorized by this Contract, such increase shall be netted against any Current Rate which requires reduction in accordance with the CPST settlements approved by this Contract, provided, however, all such required reductions to Current Rates shall be implemented no later than the final date for issuance of Refunds pursuant to Section III.I.8.d of this Contract.

5. BST rate disputes will continue to be resolved in the ordinary course, pursuant to applicable FCC rules.

D. Migrated Product Tiers.

1. The Commission and TWC acknowledge (i) that certain TWE-A/N systems (the "Migration Systems") have been providing collective offerings of *a la carte* channels which were created between April 1, 1993 and September 30, 1994 and which consist of one or more (a) low-priced collective offerings, containing primarily superstations, at an average price of less than \$0.29 per channel, excluding copyright fees (a "Superstation Tier"), and (b) low-penetrated collective offerings predominantly containing channels which had been affirmatively marketed as a separate tier before being offered on an *a la carte* basis (a "Preferred Tier") and (ii) that such offerings provided by such Migration Systems cumulatively contain in excess of six channels migrated from BST and/or CPST.

2. Any Superstation Tier offered by a Migration System shall be treated as a separate MPT. The initial price of such MPT will be based on the Current Rate of the Superstation Tier. Where neighboring TWC systems each offer an NPT or MPT consisting primarily of superstations and such NPT or MPT would be priced differently under the Commission's regulations and this Contract, an adjustment may be made between or among such Current Rates on a revenue neutral basis so that a uniform rate for such NPTs/MPTs may be established. In selecting services to be returned to a CPST in accordance with paragraph 3 below, the Migration System serving Charlotte, North Carolina and surrounding areas may move services from a Superstation Tier in an effort to achieve a more uniform line-up among such adjacent NPTs and MPTs. All such uniformly priced NPTs/MPTs shall be subject to the price cap set forth in paragraph 7 below.

3. Any Migration System shall select services from the Preferred Tier(s) to return to a CPST so that the cumulative number of migrated services remaining on any

Preferred Tier(s) and any Superstation Tier is no greater than six. The subscriber's bill shall be adjusted by no more than 25 cents per such channel returned to the CPST. The services not returned to a CPST from the Preferred Tier(s) shall be offered as a single MPT, separate from any Superstation Tier. The initial price of any such MPT will be based on the Current Rate of the Preferred Tier(s), reduced by an amount equal to the percentage of channels shifted to a CPST. Eligible Subscribers shall be issued a CPST Refund as reflected in Appendix A.

4. On its own motion, the Cable Services Bureau, consistent with the terms set forth herein, hereby reconsiders any Letter of Inquiry ("LOI") rulings involving any Migration System (LOI-93-24; LOI-93-32; LOI-93-47; LOI-93-48), and TWE-A/N hereby petitions to withdraw its Applications for Review of such LOI rulings and such petitions are hereby granted by the Commission. The principles in this Section III.D. relating to the unregulated treatment, for benchmark calculation purposes, of up to six migrated channels, as incorporated in such reconsidered LOI rulings, shall be binding on any LFA decision relating to BST rates charged by any Migration System.

5. On each of its systems which does not, as of the Publication Date, offer a collective offering of *a la carte* channels created between April 1, 1993 and September 30, 1994, TWC may move a maximum of four existing BST or CPST services to a single MPT per system. TWC will set the initial rate for any new MPT created pursuant to this paragraph at the same level, on a per channel basis, that is set for that franchise's CPSTs under the Contract. The rates for any BST or CPST from which such channels are moved shall be reduced on a per channel basis so that the initial creation of any such MPT shall be revenue neutral.

6. TWC may not require the subscription to any tier, other than the BST, as a condition for subscribing to an MPT, and may not require subscription to an MPT as a condition for subscribing to a CPST. Because the restructuring involved in the creation of MPT(s) as described herein does not fundamentally change the service provided to subscribers, TWC will not be required to re-market any of the affected services to existing subscribers. Any services migrated may be offered on an *a la carte* basis as well as in a package.

7. For the period prior to April 1, 1997, the price of any MPT established pursuant to this Section III.D. may be adjusted solely to reflect unrecovered inflation and external cost increases, including that currently accrued but uncharged, in the manner permitted by the Commission's rules for CPSTs. There will be no limitation on the number of new services TWC may add to an MPT. The price of any such MPT may be increased to reflect new services added to the MPT by an amount not to exceed \$.20 per added channel, plus the actual license fee(s) for the added channel(s).

8. On or after April 1, 1997, TWC may convert any MPT into an NPT, as defined in 47 C.F.R. § 76.987, including subsequent clarifications or amendments. Because customers will be able to subscribe to CPST(s) and an MPT on a stand-alone basis, as of April 1, 1997 the Commission will regulate MPT rates in the same manner in which the Commission currently regulates NPT prices. Such NPTs will be treated as all other NPTs under the Commission's rules, provided such NPT is offered without a buy-through requirement of any tier other than the BST.

E. Customer Refunds and CPST Rate Reductions. Pursuant to the settlement of TWC's existing CPST rate cases as described in this section, TWC will provide Refunds,

which in the aggregate total in excess of \$4.7 Million, plus interest computed in accordance with FCC requirements for subscriber refunds, and shall implement CPST rate reductions, on the terms and conditions, and in the manner, set forth below.

1. In settlement of all CPST complaints involving the review of an FCC Form 393 and/or FCC Form 1200 submitted by TWC which are pending as of the Publication Date, TWC will provide a Refund to each Eligible Subscriber as set forth in Appendix A to this Contract.

2. TWC agrees to waive its right to a credit for the franchise fee paid to the LFA on the CPST Refund amount.

3. Communities which receive CPST reductions to Current Rates, in accordance with Section III.C.4. of this Contract, are set forth in Appendix A to this Contract.

F. Infrastructure Upgrade Requirement.

1. Upgrade Requirement.

TWC will upgrade all its cable systems so as to meet the following technical standards: each TWC cable system with a present capacity of at least 550 MHz will have a bandwidth capacity of at least 750 MHz within five years after the Effective Date; all other TWC cable systems will have a bandwidth capacity of at least 550 MHz within five years after the Effective Date. At least 50% of all TWC subscribers will be served by a system with a capacity of at least 750 MHz, of which at least 200 MHz is expected to be allocated to digital distribution. Fiber-to-the-node architecture will be deployed to improve signal quality and reliability of such systems. At least 60% of the new analog services added

during the term of the Contract will be added to the CPST and not to BST, NPT or MPT. On average (weighted by CPST subscribers), CPST service offered on the upgraded systems will contain at least 15 additional channels by the end of the Contract. TWC agrees to invest \$4 Billion in capital costs in connection with the upgrade of its cable systems. At least 60% of all capital expended in connection with the upgrade commitment described herein shall be applied for the benefit of BST and CPST subscribers. TWC has selected, and will select, its systems to be upgraded without discrimination based on socio-economic status.

2. No Impairment Of Local Authority.

Nothing herein shall restrict the legal authority of LFAs to negotiate upgrades for their particular franchise areas which exceed the scope of this Contract.

3. Reporting Requirements.

No later than 90 days following the end of each calendar year during all of which the Contract is in effect, and within 90 days following the end of the last month following expiration of this Contract other than calendar year end, TWC will provide a progress report to the FCC, for the year or such shorter period then ended during which this Contract was in effect, setting forth the extent of progress TWC has made to upgrade systems in compliance with Section III.F.1.; the number of BST and CPST subscribers benefitting from such upgrades; system reliability and service improvements resulting from such upgrades completed during the previous calendar year; and TWC's projected system upgrade activities during the following year of the Contract. Such report will be served on each LFA. The FCC reserves the right to inspect the books and records of TWC and interview corporate employees for the purpose of determining compliance with this Contract.

4. CPST Rates Subject To Price Cap.

a. Beginning January 1, 1996, TWC will be permitted to increase the monthly rates for the most highly penetrated CPST on each of its systems by \$1.00 during each year of this Contract. These rate increases have been established at a level designed to recover solely those costs allocable to BST and CPST subscribers.

b. During the life of this Contract, the only other permitted increases to CPST rates will be for inflation and increases in external costs. In particular, during the term of this Contract, TWC will not avail itself of any additional per-channel adjustment permitted by the Going Forward Rules for any programming services added to the CPST after the Effective Date hereof. Except as to TWC systems which had already commenced a roll out of the addition of channels to CPST and associated per channel adjustments pursuant to the Going Forward Rules prior to the Publication Date, any per channel adjustments implemented pursuant to the Going Forward Rules by any TWC systems for services added by such systems after the Publication Date, but prior to the Effective Date, shall be netted against the initial CPST adjustment authorized by Section III.F.4.a. above. Upon implementation of any such initial CPST adjustment, net of any per channel adjustment taken by such TWC systems which have added services after the Publication Date, such TWC systems will be allowed to concurrently adjust CPST rates to reflect any license fees not already passed through to subscribers associated with any such services added to such systems after the Publication Date. TWC will not seek to pass through to subscribers any additional capital costs relating to the upgrade requirement in this Contract pursuant to any provision of the Commission's rules, including, but not limited to, any rules or policies adopted by the Commission relating to the pass through of external costs, upgrade

incentives, or cost-of-service. TWC reserves the right to seek to pass through additional capital costs associated with any upgrades specified by any franchise agreement, local law, regulation or ordinance which exceed the requirements of this Contract. Nothing herein shall affect the ability of TWC to implement any New Product Tier ("NPT"), add channels to any such NPT, or establish rates for any such NPT, subject to the FCC Going Forward Rules, or to implement any MPT permitted by the terms of this Contract.

5. Failure To Meet Target.

If TWC fails to meet the upgrade requirement so as to provide the bandwidth capacities described in Section III.F.1. of this Contract within the term provided for therein, the then existing CPST subscribers to the cable systems as to which such commitment has not been met will be entitled to refunds (in the form of prospective bill credits) of the increases (net of inflation and external cost adjustments) in CPST rates taken under Section III.F.4.a. of this Contract, plus interest computed in accordance with FCC requirements for subscriber refunds, and a liquidated damages penalty of 15% of such refund amount.

6. Adjustments To Systems Subject To Contract.

a. TWC shall include any cable systems acquired from CVI within the provisions of this Contract, provided that the CPST settlement provisions of this Contract shall not apply until any applicable settlements are mutually agreed upon between TWC and the Commission. Addition of any other TWC systems within the provisions of this Contract shall be subject to FCC approval, which will be expeditiously decided and not be unreasonably withheld. Each LFA representing any such system to be added to the provisions of this Contract shall be served with a copy of the Contract and shall be afforded a 45-day opportunity to opt out of the lifeline BST provisions in accordance with Section

III.A.1.a. of this Contract. The provisions of this Contract will become effective as to any such additional system upon such notification to affected LFAs, which date shall become the Publication Date as to such system, and the provisions of this Contract shall extend for a period of five years from that date.

b. In the event of a sale of any system during the period of applicability of this Contract, the purchaser may elect, with the concurrence of the FCC, for the provisions of this Contract to continue to apply to such system. Such FCC concurrence shall be expeditiously decided and not be unreasonably withheld. In the event the purchaser elects not to have the provisions of this Contract apply to any such system, the CPST subscribers to such system shall be eligible for the refunds calculated pursuant to Section III.F.5. in the event the upgrade commitment described in Section III.F.1. has not been completed prior to the consummation of such sale.

c. The upgrade capital costs set forth in Section III.F.1. of this Contract shall be adjusted, as mutually agreed to by TWC and the Commission, to reflect any addition or deletion of systems subject to this Contract. The approval from the Commission of such adjustment shall be expeditiously decided and not be unreasonably withheld.

G. BST And CPST Rate Stability.

1. In the event the FCC establishes regulations allowing annual adjustments to BST and CPST rates, with procedures designed to reduce regulatory lag, TWC agrees to be bound by such regulations and to elect to adjust BST and CPST rates on an annual basis pursuant to such regulations, provided, however, TWC shall not be delayed

in implementing its annual adjustments to CPST rates as set forth in Section III.F.4. due to regulatory lag related to the BST rate approval process.

2. TWC will not elect to file cost-of-service showings to justify BST or CPST rate levels above the level authorized by this Contract for any system subject to this Contract for the term hereof.

H. Additional Consumer Benefits.

1. Service To Public Schools.

a. TWC shall offer service connections at one outlet in 100% of the public schools (Grades K-12) located within 200 feet from the activated plant of its cable systems. Such connections will be made free of charge and as promptly as possible to all such schools requesting connections. TWC will offer such service connections to any other such public schools located within its franchised service areas at Cost. If any internal wiring installation is requested to serve additional outlets in such schools, it will be provided at TWC's Cost of materials and labor at the applicable Hourly Service Charge; provided, however, that such internal wiring will be provided without charge if TWC is able to coordinate with other comparable electrical wiring installation in cases of new construction or substantial rehabilitation of existing schools. Any such public school may elect to install its own internal wiring and to bear the cost thereof. BST and CPST service will be provided to each outlet in such schools free of any charges.

b. TWC shall offer service connections, including any requested internal wiring for additional outlets, at Cost to any private Secondary School, as defined by, and which receives funding pursuant to, Title 1 of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 241a et seq., and which is located within 200 feet from the

activated plant of its cable systems. BST and CPST service will be provided to each outlet in such schools free of any charges. TWC will offer such service connections to any other such private Secondary Schools located within its franchised service areas at Cost. Any such private Secondary School may elect to install its own internal wiring and to bear the cost thereof.

c. TWC will provide a free monthly educational program listing to each connected school. Additional copies of such program listings will be provided, if requested by a school, at Cost. Such educational program listing will identify and describe programming on the TWC system that is appropriate for use in the classroom and will provide suggested curriculum support ideas.

d. TWC will develop and provide to connected schools materials for teachers that explain the educational applications of TWC's broadband cable systems. The materials will include a self-explanatory notebook and video. One copy of such materials will be provided at no charge to all school districts with connected schools in franchise areas served by TWC. Additional copies of such materials will be provided, upon request, at Cost.

e. Upon successful development by TWC and Time Inc. of an on-line service for personal computers, TWC will provide each connected school with a free connection to this on-line service to the extent it is available on the local TWC cable system. Upon request, each connected school will receive one free modem and free access to the TWC/Time Inc. on-line service for use during the school year. Additional modems will be made available, upon request, at Cost. Free access to the TWC/Time Inc. on-line service will be provided through each such modem for use during the school year. In addition,

TWC will sponsor a workshop in each franchise area to educate teachers about the TWC/Time Inc. on-line service and to provide them with an opportunity for hands-on training.

f. To the extent a local franchise agreement contains an obligation to provide connections to schools as agreed to herein, TWC agrees not to seek to recover any such costs for these connections as external or other costs.

2. **Home Wiring.**

a. Prior to a customer's termination of cable service, TWC will not restrict the ability of a customer to remove, replace, rearrange or maintain any cable wiring located within the interior space of the customer's dwelling unit, so long as such actions do not interfere with the ability of such TWC system to meet FCC technical standards or to provide services to, and collect associated revenues from, that customer or any neighboring customer in a multiple dwelling context.

b. TWC will provide customers with a notification upon commencement of service, and annually thereafter, advising them of their rights relating to home wiring. Such notice will advise customers that they may either (i) remove, replace, rearrange or maintain the home wiring themselves, (ii) select a qualified third party contractor, or (iii) request the TWC system provide such service at standard hourly installation rates, plus materials at Cost.

c. Such notice will inform customers that if any home wiring is improperly installed or rearranged by anyone other than TWC, and any harmful or improper signal leakage occurs as a result, the customer may be held responsible for the Cost of

rectifying the problem. Pursuant to FCC rules, TWC recognizes that it is required to terminate service to any location where signal leakage problems are not corrected.

d. TWC customers will be encouraged to use high quality home wiring materials to avoid signal leakage and to maintain signal quality. Such notice will offer to supply such materials to subscribers at Cost.

e. TWC will provide a model of this notice to the FCC for approval prior to its dissemination to its customers, such approval not to be unreasonably withheld.

I. Miscellaneous Provisions.

1. Modification And Termination.

a. Except as otherwise provided herein, this Contract may not be terminated or modified without the mutual agreement of TWC and the Commission.

b. TWC may petition the Commission to modify or terminate this Contract based on any relevant change in applicable laws, regulations or circumstances. TWC will serve a copy of any such modification or termination petition, and the FCC Public Notice relating thereto, on the LFAs for the affected systems. In no event shall TWC be required to make more than one mailing to each LFA for any given modification or termination request. Interested persons will have 30 days after the FCC releases an appropriate Public Notice to comment and 15 days for reply comments before the FCC acts on any such TWC petition. The FCC's consent to any such termination or modification petition shall be demonstrated by an order issued by the FCC's Cable Services Bureau or at the FCC's option by the Commission itself. The FCC shall act expeditiously on such petition and grant of the petition shall not be unreasonably withheld.

c. In the event of any changes to the provisions of the Act or any material changes to the FCC rules thereunder relating to rates (BST, CPST or equipment) that are favorable to TWC, any TWC system may elect to be relieved from the relevant rate provisions (Sections III.A.2., III.A.3., III.B., III.D., III.F.4. and III.G.) of this Contract accordingly, but shall remain bound by all other provisions of this Contract. In the event any such system elects to be relieved from such contract provisions in favor of such favorable regulatory provisions such system will only be allowed to recover any incremental amount that results under such favorable regulatory provisions in excess of any amount already recovered pursuant to Section III.F.4.a. of this Contract. Nothing herein shall restrict the ability of any TWC system to adjust CPST rates in the event CPST rates are not regulated based upon changes to the Act or FCC regulations.

d. The Commission expressly recognizes that TWC has relied on the current federal law and FCC regulations governing cable television programming and rates in entering into this Contract, and that the Contract represents an accommodation between the FCC and TWC that generates substantial public interest benefits. Consequently, the Commission agrees not to find any CPST or equipment rate adjustments implemented in accordance with this Contract to be "unreasonable" under any subsequently-modified FCC regulations or under any subsequently-modified applicable statute, to the extent the Commission has discretion under such statute in determining whether any such rate adjustments are unreasonable.

2. Authority To Enforce Contract.

a. Nothing in this Contract shall restrict the ability of LFAs to enforce the provisions of otherwise valid local franchise agreements, local laws, regulations

and ordinances that are not the subject of or affected by the terms of this Contract, except that LFAs may not regulate rates or order refunds for the services and equipment subject to this Contract except in accordance with the terms of this Contract. Nothing herein shall affect the enforceability of any otherwise valid preexisting local franchise agreement, ordinance, local law or regulation which provides benefits which exceed those provided in this Contract relating to system upgrades or the wiring of schools, nor shall LFAs be restricted in their authority to negotiate for such additional benefits after the Effective Date of this Contract. It is not the intent of either the FCC or TWC that this Contract create any judicially enforceable rights in any other parties. This Contract shall be enforceable against TWC by the FCC exclusively and no other party may seek to enforce this Contract as a third party beneficiary or otherwise, except that subscribers to TWC systems which increase their CPST rates will still have the right to file complaints with the FCC to the extent permitted under applicable FCC rules.

b. For purposes of the Commission's authority to enforce any provision of this Contract against TWC, including enforcement actions brought in U.S. District Court, TWC agrees that any breach of this Contract by TWC shall be considered the equivalent of a violation of an order of the FCC, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order. However, aside from this limited purpose, TWC and the FCC agree that a breach of this Contract by TWC is not to be considered by any other party as the equivalent of a violation of an otherwise-valid FCC regulation or FCC order. In particular, any failure to comply with this Contract shall not be a basis for any denial of a franchise renewal by, or other enforcement action of, any LFA.

3. All Necessary Waivers And Preemptions Deemed Granted.

a. In addition to the specific waivers of the Commission's rules identified in the Contract, the Commission order adopting this Contract shall affirmatively state that any and all waivers of the Commission's rules, and any and all modifications to Commission forms, necessary to effectuate the terms of this Contract are deemed to be granted thereby. The Commission finds that the concurrent exercise of non-federal regulatory authority over the subject matter of this Contract is an impermissible interference with the FCC's regulatory authority and with its ability to accomplish its objectives in entering into this Contract. Accordingly, the Commission hereby expressly preempts any state or local law, regulation, ordinance or franchise that is inconsistent or conflicts with this Contract. The Commission will not assert in any proceeding that TWC's compliance with the terms of the Contract violates any Commission rule or order and, in any proceeding before the Commission brought by a third party, a showing by TWC that it has complied with the terms of the Contract shall constitute a defense to any claim that TWC's actions in meeting the terms of the Contract constitute a violation of any applicable Commission rule or order.

b. CPST rate increases referenced in Section III.F.4. of this Contract will not be subject to prior FCC approval pursuant to Section 76.960 of the FCC rules or otherwise, even if an adverse decision has been issued by the FCC as to any TWC CPST rate in the year prior to the Publication Date. Subscribers to TWC systems which increase their CPST rates still have the right to file complaints with the FCC to the extent permitted under applicable FCC rules.

4. Effect On Other Proceedings.

a. The Commission agrees that it will not institute, on its own motion, any proceedings against TWC based upon the information obtained during the consideration of the Contract. In addition, in the absence of additional facts, the Commission agrees that any allegations and other circumstances involved in consideration of this Contract or settlement of the pending rate cases will not be used against TWC with respect to any future proceedings at the Commission. Nor may they be used against TWC as evidence of any refund liability due subscribers in any proceeding conducted by any LFA.

b. This Contract is intended to resolve the CPST complaints being settled in accordance with Section III.C.; to provide certainty regarding the CPST rate adjustments determined to be reasonable in accordance with Section III.F.4., and to otherwise cover those matters expressly set forth herein. The Commission and TWC acknowledge the existence of various lawsuits to which they are both parties. The Commission and TWC agree that this Contract shall have no effect on any pending lawsuit to which TWC is a party or, subject to Section III.I.7., on any future challenges to the Commission's regulatory authority that TWC may elect to initiate, other than a challenge to the Commission's regulatory authority to enter into and enforce this Contract.

c. The Commission expressly recognizes that this Contract is of limited duration and scope, and may be modified or terminated before its term has ended as provided for in Section III.I.1. of this Contract. Accordingly, the Commission and TWC agree that this Contract does not moot any legal challenge or defense relating to any provision of the Act or to the Commission's regulatory authority that TWC has brought or may bring in the future, other than a challenge to the Commission's regulatory authority to

enter into and enforce this Contract. The Commission will not seek to dismiss any such legal challenge on grounds that this Contract renders such challenge moot and will actively oppose any assertion in court that this Contract moots any such challenge.

5. No Admission Of Wrongdoing.

This settlement is without a finding by the Commission of any wrongdoing by TWC or any of its systems, subsidiaries or affiliates. Neither this Contract nor any aspect of the settlement contained herein constitutes an admission by TWC of any violation of, or failure to conform to or comply with, any law, rule or policy applicable to TWC or any of its systems, subsidiaries or affiliates.

6. Contract In Public Interest.

In consideration of the Commission entering into this Contract, and resolving and terminating pending CPST cases and complaints in accordance with the terms of this Contract, TWC hereby agrees to the terms, conditions and procedures contained in this Contract. TWC and the Commission each acknowledge that it believes this Contract, and the terms, conditions and procedures hereof, provide for and will facilitate a fair and expeditious resolution of the cases and complaints that are the subject hereof in a manner that serves the public interest.

7. Legal Challenges.

a. TWC waives any right it may have to any judicial review or appeal, or any other right to otherwise challenge or contest the validity of any order by the Commission adopting this Contract, or to use this Contract as evidence in any such proceeding. TWC agrees that the provisions of this Contract shall be incorporated by reference in the Commission's order formally approving this Contract. TWC and the

Commission agree that they will each actively defend, before any forum, any Commission order adopting the provisions of this Contract against any appeal of or other legal challenge by any third party to any such order. TWC and the Commission each agree that they will reasonably cooperate with the other in any such defense of the Contract and any such order.

b. If the Commission, or the United States on behalf of the Commission, brings an action in any United States District Court to enforce the terms of any Commission order adopting this Contract, TWC agrees, subject to the terms of the immediately preceding paragraph, that it will not contest the validity of such Commission order, or the Commission's authority to enter into the Contract. TWC reserves the right, in defense of such an enforcement action, to demonstrate that it has complied with the provisions of the Contract or to assert its own interpretation regarding any performance obligations imposed by the Contract which may be subject to dispute.

8. Effective Date And Term.

a. The term of this Contract shall commence on the Effective Date and, subject to Section III.I.1. above regarding modification and termination and Section III.F.6. above regarding adjustments to systems covered, shall continue in effect for five (5) years.

b. TWC and the Commission agree to execute this Contract as of the Effective Date promptly upon issuance by the Commission of an order approving this Contract.

c. The Commission and TWC expressly acknowledge and agree that the effectiveness of this Contract is contingent upon resolution and termination of TWC's CPST proceedings; issuance by the Commission of an order approving the Contract, and

TWC's compliance with the terms, conditions, and procedures set forth in the Contract. If this Contract is not approved by Commission order and accepted by TWC, or if the Contract is otherwise rendered invalid, in whole or in part, by final order of any court of competent jurisdiction, the Contract or such part may not be used in any fashion by the FCC in any legal proceeding.

d. TWC may commence any necessary or appropriate actions to initiate the rate adjustment processes embodied in this Contract at any time after the Effective Date, provided, however, as to any system listed on Appendix A, TWC shall not implement any rate adjustment pursuant to Section III.F.4.a. of this Contract unless the Refund provided for in Section III.E. has been issued as to such system, or the issuance of such Refund begins simultaneously with such rate adjustment. All Refunds will be issued within six months of the first rate adjustment implemented pursuant to Section III.F.4.a. To facilitate prompt initiation of the refunds and rate adjustments authorized by this Contract, any local franchise agreement or any state or local law or regulation is preempted on a one-time basis to the extent that it requires TWC to give advance notice of rate and service changes to subscribers. Such notice shall be provided by the best means practicable, such as newspaper announcements and/or on-screen messages. Such preemption shall be limited to the period prior to February 1, 1996. If TWC is unable to commence implementation of such refunds and rate adjustments by January 1, 1996, but commences such implementation on or before February 1, 1996, it shall provide at least thirty days notice to LFAs and subscribers. If any subscribers cancels his or her subscription to the relevant CPST within thirty days after the date of the first bill reflecting the CPST adjustment authorized by this Contract, TWC will refund to that subscriber the incremental amount attributable to such increase.

9. Public Notice.

The Commission will issue promptly a Public Notice in which the Commission proposes to adopt the Contract as a final order, and shall provide interested parties with thirty (30) days to comment on the Contract and an additional fifteen (15) days in which to file reply comments.

10. Force Majeure.

TWC shall not be deemed in breach of its commitments under this Contract in the event of any delay or failure in performance by any TWC system from any cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, unusually severe weather conditions, or inability to secure local permits after all diligent efforts by TWC to secure such permits.

11. Severability.

If any provision, clause or part of this Contract is invalidated by order of any court having proper jurisdiction over the subject matter of this Contract, the remainder of this Contract shall not be affected thereby and shall remain in full force and effect; provided, however, that, if either party reasonably determines that such invalidation is material to this Contract, the parties shall negotiate in good faith to reconstitute the Contract in a form that is, to the maximum extent possible, consistent with both the original intent of both parties in entering into this Contract and the rationale of such invalidation order.

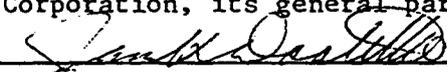
12. Entire Understanding.

This Contract and its appendices, as either or both may be amended in accordance with the terms herein, constitute the entire agreement between TWC and the Commission with respect to the subject matter of this Contract and supersede all prior agreements and understandings, whether oral or written, between TWC and the Commission with respect to the subject matter of this Contract. No representation, warranty, promise, inducement, or statement of intention has been made by TWC or the Commission which is not embodied in this Contract, and neither party shall be bound by, or be liable for, any alleged representation, warranty, promise, inducement, or statement of intention not embodied in this Contract or its appendices.

IN WITNESS WHEREOF, this Social Contract has been duly executed and delivered by or on behalf of the parties hereto as of the Effective Date as defined herein.

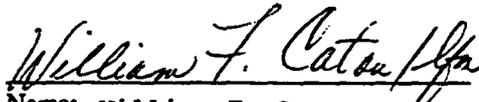
TIME WARNER ENTERTAINMENT COMPANY, L.P.

By: American Television and Communications Corporation, its general partner

By: 

Name: James H. Doolittle
Title: Vice President

FEDERAL COMMUNICATIONS COMMISSION

By: 

Name: William F. Caton
Title: Acting Secretary

TWI CABLE INC.

By: 

Name: Marc Apfelbaum
Title: Vice President

**TIME WARNER ENTERTAINMENT-
ADVANCE/NEWHOUSE PARTNERSHIP**

By: Time Warner Entertainment Company, L.P.
Managing Partner

By: American Television and Communications Corporation, its general partner

By: 

Name: James H. Doolittle
Title: Vice President

APPENDIX A

<u>COMMUNITY</u>	<u>CUID</u>	<u>REFUND</u>
Rockledge	FL0007	\$5,171
Indian Harbor Beach	FL0009	2,384
Melbourne	FL0013	14,362
Melbourne	FL0014	30,759
Volusia County	FL0015	12,505
Palm Bay*	FL0017	89,135
West Melbourne	FL0021	2,198
Cape Canaveral	FL0163	1,557
Melbourne	FL0165	717
Orlando	FL0181	18,770
St. Petersburg	FL0196	63,508
Brooksville	FL0240	3,270
Orlando	FL0252	34,089
Lakeland	FL0290	6,200
Brooksville	FL0312	6,500
Brooksville	FL0314	8,217
Sandford	FL0322	14,787
Brooksville	FL0597	3,107
Belleview	FL0622	7,763
Salem	MA0063	11,274
Melrose	MA0097	5,080
Stoneham	MA0101	322
Kansas City	MO0198	78,801
Jackson*	MS0080	164,400
Clinton*	MS0128	54,208
Salisbury, including:	NC0015	22,981
East Spencer	NC0285	
Spencer	NC0158	
Granite Quarry	NC0407	
Rowan County (central)	NC0385	
Rockwell	NC0677	
Faith	NC0676	
Cleveland	NC0574	
Wilmington, including:	NC0016	106,115
Wrightsville Beach	NC0041	
New Hanover County	NC0140	
Leland	NC0695	
Navasa	NC0692	
Shelby, including:	NC0027	20,516
Cleveland County	NC0279	
Polkville	NC0521	

*CPST rate reduction required.

COMMUNITY

CUID

REFUND

Patterson Springs	NC0522	
Lawndale	NC0523	
Fallston	NC0524	
Boiling Springs	NC0529	
Grover	NC0694	
Earl	NC0693	
Waco	NC0756	
Lattimore	NC0757	
Moorestown	NC0816	
Belwood	NC0839	
Casar	NC0843	
Wilmington-Southport, including:	NC0167	29,732
Caswell Beach	NC0228	
Holden Beach	NC0294	
Long Beach	NC0227	
Ocean Isle Beach	NC0270	
Yaupon Beach	NC0172	
Boiling Springs Lakes	NC0862	
Brunswick County	NC0229	
Morehead City, including:	NC0168	39,706
Atlantic Beach	NC0197	
Beaufort	NC0196	
Cape Carteret	NC0200	
Cedar Point	NC0815	
Cartaret-County	NC0202	
Emerald Isle	NC0199	
Newport	NC0201	
Pine Knoll Shores	NC0198	
Swansboro	NC0203	
Indian Beach	NC0282	
Onslow County	NC0384	
Craven County	NC0205	
Havelock	NC0170	
Maysville	NC0585	
Pollocksville	NC0583	
Jones County	NC0584	
Kannapolis, including:	NC0193	41,358
Cabarrus County	NC0174	
China Grove	NC0284	
Concord	NC0173	
Harrisburg	NC0287	
Landis	NC0288	
Rowan County	NC0194	
Mt. Pleasant	NC0455	

<u>COMMUNITY</u>	<u>CUID</u>	<u>REFUND</u>
Albemarle, including:	NC0286	15,990
Stanly County	NC0515	
Norwood	NC0519	
Mt. Gilead	NC0530	
Locust	NC0518	
Richfield	NC0508	
Oakboro	NC0517	
New London	NC0507	
Stanfield	NC0520	
Mecklenburg, including:	NC0405	121,204
Charlotte	NC0755	
Mint Hill	NC0504	
Pineville	NC0505	
Matthews	NC0691	
Weddington	NC0720	
Lancaster County	SC0372	
Cabarrus County	NC0174	
Wilmington-Burgaw, including:	NC0408	8,719
Pender County	NC0409	
Weddington	NC0720	3,042
Lincoln	NE0032	233,263
Nashua	NH0034	60,935
Fort Lee, including:	NJ0082	129,719
Cliffside Park	NJ0232	
Edgewater	NJ0092	
Englewood	NJ0251	
Englewood Cliffs	NJ0208	
Fairview	NJ0253	
Guttenberg	NJ0338	
Leonia	NJ0431	
Little Ferry	NJ0339	
Moonachie	NJ0427	
Palisades Park	NJ0252	
Ridgefield	NJ0203	
Ridgefield Park	NJ0254	
Teterboro	NJ0484	
Upper Manhattan*	NY0104	599,837
Binghamton, including:	NY0133	219,198
Town of Binghamton	NY0132	
Chenango	NY0134	
Conklin	NY0135	
Dickinson	NY0136	
Fenton	NY0137	
Kirkwood	NY0139	

*CPST rate reduction required.

COMMUNITY

CUID

REFUND

Maine	NY0251	
Nanticoke	NY0983	
Owego	NY0403	
Union	NY0402	
Vestal	NY0260	
Newark Vly	NY1650	
Endicott	NY0249	
Johnson City	NY0138	
Port Dickinson	NY0140	
Lower Manhattan	NY0234	180,360
Colonie	NY0336	4,219
Albany	NY0338	6,141
E. Syracuse, including:	NY0329	300,822
Brutus	NY0955	
Town of Camillus	NY0333	
Town of Cato	NY1501	
Cicero	NY0372	
Clay	NY0373	
De Witt	NY0328	
Town of Elbridge	NY0883	
Geddes	NY0327	
Ira	NY1504	
LaFayette	NY0881	
Lysander	NY1367	
Town of Manlius	NY0330	
Town of Marcellus	NY0847	
Mentz	NY1366	
Onondaga	NY0707	
Otisco	NY1533	
Pompey	NY1057	
Salina	NY0346	
Skaneateles	NY1211	
Town of Tully	NY1368	
Van Burken	NY0715	
Village of Camillus	NY0334	
Village of Cato	NY1503	
Village of Elbridge	NY0884	
Fayetteville	NY0332	
Jordan	NY0882	
Liverpool	NY0326	
Village of Manlius	NY0369	
Village of Marcellus	NY0848	
Meridian	NY1502	
Minoa	NY0331	
N. Syracuse	NY0546	
Phoenix	NY0720	

COMMUNITY

CUID

REFUND

Port Byron	NY0981	
Solvay	NY0671	
Village of Tully	NY1194	
Weedsport	NY0915	
Troy, including:	NY0352	182,844
Cohoes	NY0582	
Mechanicville	NY0643	
Brunswick	NY0509	
Clifton Park	NY0668	
E. Greenbush	NY0596	
Halfmoon	NY0742	
Pittstown	NY1534	
Town of Schaghticoke	NY0796	
Town of Stillwater	NY0836	
Town of Waterford	NY0589	
Village of Schaghticoke	NY0996	
Village of Stillwater	NY0837	
Valley Falls	NY1167	
Village of Waterford	NY0588	
Penfield	NY0414	6,662
Gates	NY0415	5,089
Greece	NY0416	21,079
Rochester	NY0769	42,908
Ogden	NY1062	2,704
Brooklyn/Queens*	NY1340, 1280, 1281, 1402	1,210,552
Irondequoit	NY0751	13,789
Perinton	NY0413	9,787
Brighton	NY0764	8,071
Columbus	OH0239	32,330
Westerville	OH0517	3,727
Columbus	OH0532	1,703
Reading	PA0006	34,753
Shillington	PA0011	1,821
Monroeville*	PA1775	25,324
Florence, including:	SC0015	97,072
Darlington	SC0014	
Darlington County	SC0115	
Florence County	SC0057	
Quinby	SC0191	
Timmons ville	SC0192	
Sumter, including:	SC0017	58,020
Shaw AFB	SC0102	
Sumter County	SC0116	

*CPST rate reduction required.

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Pinewood	SC0390	
Mayesville	SC0431	
Austin	TX0029	111,633
Wichita Falls	TX0483	16,033
Leander	TX1422	7,533
Reston	VA0046	17,421
Williamsburg*	VA0074	23,940
Green Bay	WI0234	37,857
Greenfield	WI0323	4,903
Hale's Corner	WI0420	1,823
Charleston	WV0104	5,762
		<u>\$4,768,081</u>

*CPST rate reduction required.

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APPENDIX B

REGIONAL EQUIPMENT AREAS

**Appleton/Green Bay, WI
Bakersfield, CA
Birmingham, AL
Boston, MA
Eastern Pennsylvania Division
Florida Divisions
Hawaii Division
Illinois/Indiana Division
Indianapolis, IN
Jackson/Monroe, MS
Kansas City, MO
Lincoln, NE
Los Angeles, CA
Memphis, TN**

**Milwaukee, WI
Minneapolis, MN
National Division - East
National Division - West
Maine Division
New York City Division
New York State Divisions
North Carolina Divisions
Ohio Divisions
Portland, OR
San Diego, CA
Shreveport, LA
Texas Divisions
Western Pennsylvania Division**