EXHIBIT A

TIME WARNER
CABLE

INFO
MAR 2 8 2001
TV-12

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Steve Brock
City of Farmington Hills
31555 W 11 Mile Road
Farmington Hills, MI 48336

Re: Franchise Fees on Cable Modem Service

Dear Mr. Brock,

As you may be aware, the Federal Communications Commission (the "FCC") on March 14, 2002 adopted a Declaratory Ruling and Notice of Proposed Rulemaking finding that cable modem services (for example, Road Runner) are, for regulatory purposes, an "interstate information service" and not a "cable service." Given that finding, the FCC further concluded that revenue from cable modem service is not revenue from the provision of "cable service" and, therefore, should not be included in the gross revenue on which franchise fees are based.

As you know, Time Warner Cable has been paying franchise fees to the City based on revenues from cable modem services in the good faith belief that these services were "cable services" under applicable laws and regulations. The FCC has now made clear that cable modem services are not "cable services", and hence should no longer be included in the gross revenue on which franchise fees are based. Therefore, we intend to cease the collection and payment of franchise fees on revenues derived from the provision of cable modem service as soon as practicable and in accordance with our Franchise Agreement. All franchise fees collected on cable modem service up until that time when franchise fees on cable modem service are terminated will be remitted to the City as a part of the regular franchise fee payments.

In light of the FCC's regulatory classification determination, we believe it is important for us to act quickly in this matter. We also believe, however, that it is important for us to consult with you. To strike the proper balance, we intend not to implement this action for ten (10) business days. If there are any facts or circumstances that you wish to bring to our attention regarding this action, please contact us as soon as possible, but in no event later than ten (10) business days following the date of this letter.

We believe the elimination of the franchise fee on cable modem service is the appropriate course in light of the FCC's Order. As a result of the elimination of the franchise fee, our cable modem customers will actually see a reduction in their monthly bill for this service. Time Warner Cable will not see any financial benefit from the elimination of the franchise fee.

We continue to value our relationship with the City of Livonia and appreciate your understanding as we work to comply with the FCC's Order.

As usual, should you have any questions or concerns in this regard, please feel free to contact me at your convenience.

Very truly yours,

Robert A. McCann
General Manager

Cc: SWOCC

INFO

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TV-12

TOTAL P.03

Comcast

Comcast Cable Communications, Inc.
253 Najoles Road
Millersville, MD 21108
410.729.8000 Tel
410.729.8187 Fax

March 25, 2002

Mr. John Lyons
Cable Administrator
2660 Riva Road
Annapolis, ~~MD~~ 21401

Dear ~~Mr.~~ Lyons,

I am writing to inform you of a regulatory ruling that may affect a small portion of the franchise fees we remit to you under our cable system franchise. As you may know, the Federal Communications Commission (FCC) has been studying the regulatory status of cable operators' offering of high-speed Internet over cable, and related "cable modem" offerings. On March 15, 2002 the FCC decided that "cable modem service is an interstate information service within the scope of [its] jurisdiction over interstate and foreign communications." As a result, the FCC explained that "revenue from cable modem service would not be included in the calculation of gross revenues from which the franchise fee ceiling is determined."

In compliance with the Commission's order, Comcast will no longer bill customers for franchise fees on cable modem service. Cable modem customers will be notified of this change on their next bill. Comcast will remit to the franchising authority all fees billed and collected for cable modem service. The FCC has noted that past collections and payments were made in good faith, therefore, we do not plan to request reimbursement of these prior payments from you or to credit our subscribers for past collections.

If you have any questions or would like to discuss this issue further, please feel free to give me a call.

Sincerely,

Chris Comer
Director of Government Affairs
Comcast – Chesapeake Bay Group

AT&T

AT&T Broadband
5401 Staples Mill Road
Richmond, VA 23228

March 29, 2002

Mr. Paul N. Proto, Director
Department of General Services
County of Henrico
P. O. box 27032
Richmond, VA 23273

Dear Paul:

I am writing to inform you of a regulatory ruling that will affect a small portion of the franchise fees we remit to you under our cable system franchise. As you may know, the Federal Communications Commission (FCC) has been studying the regulatory status of cable operators' offering of high-speed Internet over cable, and related "cable modem" offerings. On March 15, 2002, the FCC decided that "cable modem service is an interstate information service within the scope of [its] jurisdiction over interstate and foreign communications." As a result, the FCC explained that "revenue from cable modem service would not be included in the calculation of gross revenues from which the franchise fee ceiling is determined."

In compliance with the FCC's order, AT&T Broadband will no longer bill customers for franchise fees on cable modem service as of the billing period which begins April 1, 2002. Cable modem customers will be notified of this change on their next bill. In addition, AT&T Broadband will be issuing credits to customers for franchise fees paid on cable modem service for the service period after March 15, 2002. Thus, AT&T Broadband will remit to the franchising authority all franchise fees billed and collected for cable modem service up to March 15, 2002. Since the FCC has noted that past collections and payments were made in good faith, we do not plan to request reimbursement of these prior payments from you or to credit our subscribers for past collections.

If you have any questions or would like to discuss this issue further, please feel free to give me a call.

Sincerely,

Kenneth M. Dye
Vice President & General Manager

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GMP
CABLE TV
Gans Multimedia Partnership
www.gmpcabletv.com

April 4, 2002

CERTIFIED MAIL --- RETURN RECEIPT REQUESTED

John B. Norris, III
Acting County Attorney
St. Mary's County
Post Office Box 653
23115 Leonard Hall Drive
Leonardtown, Maryland 20650-0653

RE: ST. MARY'S COUNTY - FRANCHISE FEE ON CABLE MODEM REVENUE

Dear Mr. Norris:

As you are aware, Gans Multimedia Partnership has been offering cable modem service in the County since 1998. Most recently Gans and the County reached a settlement on certain unclear franchise fee matters, during which discussions Gans expressed as one of its concerns the unsettled state of the law as it related to the status of cable modem service. Nevertheless, Gans agreed to include revenues from cable modem service in the total of gross receipts used for computation of franchise fees that were owed to the County.

As you may be aware, the Federal Communications Commission ("FCC") recently determined that cable modem service is not a cable service under Title VI of the Communications Act, but is instead an interstate information service and that revenue from cable modem service should not be included in the calculation of gross revenues used to calculate franchise fees. Although this decision has been appealed to the federal courts, in light of this determination, we believe that Gans is obligated to promptly stop collecting a 5% franchise fee from cable modem customers in St. Mary's County. Accordingly, effective with the next billing under which we are

1059 East Tenth Street
Hazleton, PA 18201
570.455.4251

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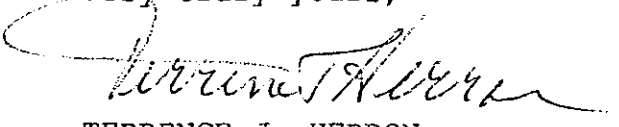
able to make this change, GMP will discontinue collecting franchise fees on cable modem revenue. We believe that this action is consistent with the dictates of the FCC's Order and is also consistent with what other cable operators have concluded they must do in order to be complaint with the FCC's decision. We will, however, continue to adhere to our settlement agreement which included these revenues in the gross receipts base.

If this situation changes as a result of the court appeal or further FCC action regarding the definition and classification of cable modem service, we will of course take appropriate actions. Should you have any questions, please feel free to contact Peter Feinberg or me.

Very truly yours,



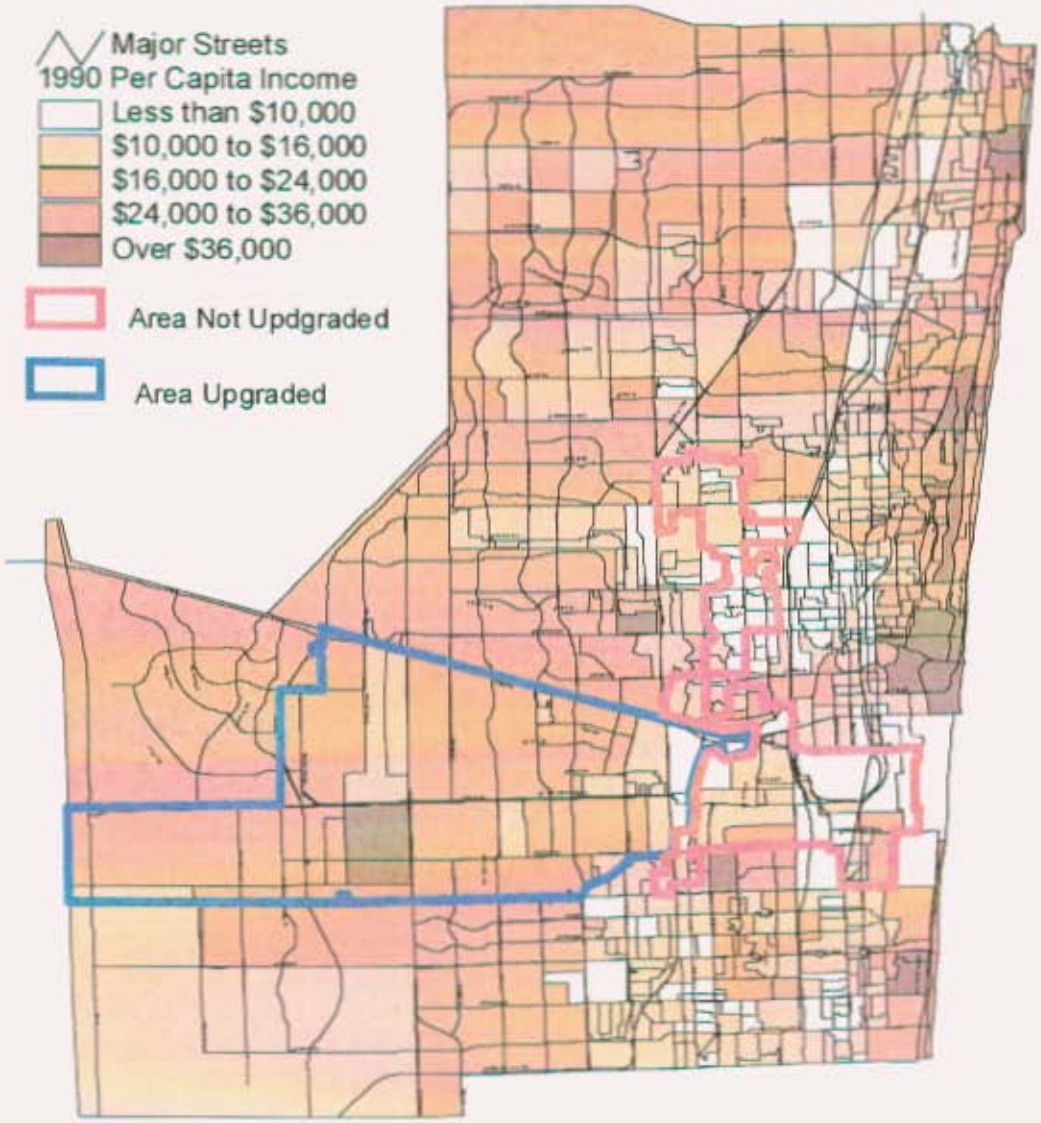
TERRENCE J. HERRON
Executive Vice President

TJH/tav

CC: Frederick E. Ellrod, Esquire
Peter Feinberg, Esquire

EXHIBIT B

Per Capita Income and Cable Upgrades
Broward County, Florida



BROWARD COUNTY

Source: 1990 Census & Office of Information Technology

EXHIBIT C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Inquiry Concerning High Speed Access to the Internet Over Cable and Other Facilities	)	GN Docket No. 00-185
Internet Over Cable Declaratory Ruling	)	
Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities	)	CS Docket No. 02-52

DECLARATION OF ED WHITELAW, Ph.D.
IN SUPPORT OF
REPLY COMMENTS OF ALLIANCE OF LOCAL ORGANIZATIONS AGAINST PREEMPTION ("ALOAP")

1. I am president of ECONorthwest ("ECO"). ECO provides economic and financial analysis and expert testimony for businesses and government. I am also a professor of economics at the University of Oregon. I received a Ph.D. in economics from the Massachusetts Institute of Technology in 1968. I have testified in administrative, legislative and Congressional hearings, and in courts in the Pacific Northwest and elsewhere in the country on economic matters. A copy of my curriculum vita is attached hereto as Exhibit 1.

2. The Alliance of Local Organizations Against Preemption ("ALOAP") has retained ECO to evaluate and express an opinion on the pricing structure that many local governments have used to charge providers of cable-modem service for using the local right-of-way ("ROW"). As I understand it, many municipalities have charged cable operators a fee equal to 5% of the revenues derived from the provision of cable-modem service within their respective communities. As I also understand it, many cable operators have agreed to pay this fee in their respective franchise agreements with municipalities in return for franchises that grant the right to provide both cable services and non-cable services. I understand the FCC has issued a declaratory ruling that cable-modem service is not a cable service.
3. As I understand it, some cable operators contend that requiring fees to be paid on revenues derived from the sale of cable-modem service would deter roll-out of the service. I also understand that some operators question why localities should be allowed to recover rents based on cable-modem revenues, as opposed to recovering rents based on revenues from what the FCC has classified as cable services. Operators have argued that the same facilities are used to provide the cable-modem service as the cable service, and argue that as there is no additional burden on the right of way, there should be no fees on services such as cable-modem service. The engineering assumptions implied by this argument do not affect the economic principles I address in this declaration.
4. Charging a fee to use a city's ROW makes good economic sense because it forces ROW users to take into account the ROW's value. The occupation of a finite amount of physical space by cable facilities within the ROW displaces use of that

same space by other facilities. Charging a fee helps ensure that the ROW will be used efficiently, that is, that the ROW won't be misused or wasted. Furthermore, the closer the fee approximates the relevant market price, the more likely the ROW will be used in an economically efficient manner, a fundamental criterion by which economists evaluate the performance of a market and overall social welfare.

5. Not charging a fee, or pricing at an artificially and therefore inefficiently low level, would treat the ROW as if it were a free good. To paraphrase Nobel laureate economist Milton Friedman, there's no such thing as a free ROW. This is particularly obvious given the external costs imposed on third parties by ROW use (traffic delays from repair or installation of ROW facilities, degradation of the roadbed, and so on). More important, free or underpriced access to a city's ROW would fail to impose any market discipline on potential users. Free access or underpriced access would fail to allocate the ROW to its highest and best use, an important social and economic goal.
6. This is easily prevented by charging a rental fee that reflects the ROW as a valuable asset or resource for which there are important and competing uses. Free or underpriced access to a city's ROW would increase the demands on the ROW and place substantial economic burdens on the city through additional inspection, maintenance and construction costs. Free or underpriced access would also increase the costs to other ROW users through unnecessary make-ready expenses, unnecessary design and modification expenses, and unnecessary repairs and disruptions caused by overuse or unnecessary use of the resource.

7. The concept that consumption of public lands should be priced based on the value conveyed is written into Oregon and Federal regulations and guidelines. The Oregon Division of State Lands ("DSL"), the agency responsible for managing state lands including rivers and forests, requires that interested parties pay fair market value for using state property. For example, the rules for granting easements and temporary use permits on trust and non-trust land includes the following language: [1]

> [T]he State Land Board, through the Division [of State Lands], has the constitutional responsibility to manage all land ... under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.
>
> [T]he Division is required to manage its Trust Land to ensure that full market value is obtained from any use of this asset.
>
> The Division shall, prior to granting an easement, require an applicant ... to submit to the Division a compensatory payment for each individual crossing of state-owned land in the greater of:
>
> (a) One-hundred percent (100%) of the fair market value of the area requested for the easement;
>
> (b) Two-hundred and fifty dollars ($250); or
>
> (c) The highest comparative compensatory payment.

The DSL defines "fair market value" and "comparative compensatory payment" as:

> 'Fair Market Value' is the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable

[1] State of Oregon, Division of State Lands. "OAR 141-083-0800 through 141-083-0860 provide guidance for the issuing of easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea. OAR 141-122-0010 through 141-122-0110 are the rules for granting easements and temporary use permits on Trust and Non-Trust Land." <http://statelands.dsl.state.or.us/easements.htm>

knowledge of the relevant facts concerning the property.

> 'Comparative Compensatory Payment' is the amount of money paid for an easement to the owners of similar land adjacent to, or in the vicinity of Division-managed parcels.

A report by Springsted Incorporated[2] addresses the concept of the value of a municipality's ROW:

> In some cases, the demand [for ROW access] threatens to exceed the limited available space in the public right-of-way. Uncontrolled use of the public right-of-way for utility placement increases construction and installation costs of future users and reduces availability of limited space. The space above and beneath the surface of the public right-of-way is a limited resource which has value to public investor-owned utilities, as well as to other for-profit service providers.

On this topic, the Public Utility Commission of Oregon notes:[3]

> The streets, alleys and highways of Oregon's municipalities, over and through which the access lines of the telecommunications utilities run, are real property with economic values. Private owners normally charge for the use of their property, and municipalities are either owners of municipal streets, alleys and highways or they hold them in trust for their citizens. Telecommunications utilities make exclusive use of these streets, alleys and highways, and there does not seem to be any reason why municipalities should not charge, and utilities pay, for that use.

8. The federal government has also traditionally recognized that the ROW has economic value and users of the ROW should pay for access. A report by the National Ocean Service on the fair market value for a permit to allow a fiber-optic cable to pass through national marine sanctuaries states: [4]

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[2] Springsted Incorporated. *Public Right-of-Way Cost Recovery Plan Mid-America Regional Council*. May 1998. Page III-2.

[3] Public Utility Commission of Oregon AR 218. Order No. 90-1031. June 29, 1990, Page 5.

[4] National Ocean Service. *Final Report Fair Market Value Analysis For A Fiber Optic Cable Permit In National Marine Sanctuaries*. National Marine Sanctuaries Program. December 2000. Page 6.

> According to the NMSA [National Marine Sanctuaries Act], the Secretary [of Commerce] may assess and collect a fee that includes the cost of issuing the permit, as well as monitoring and other costs incurred as a result of the permitted activity. In addition, the fee must include 'an amount which represents the fair market value of the use of the sanctuary resource.'

The appraisal literature[5] describes a number of methods of calculating the market value of the ROW. I describe four methods:

A. Land-based appraisals calculate the value of a ROW based on the value of land adjacent to the ROW. This is sometimes referred to as the across-the-fence ("ATF") method. A variation on the ATF method acknowledges, that because the ROW provides a continuous corridor, ROW has a higher value than the disparate, unassembled adjacent parcels. This corridor value "typically exceeds ATF appraisals by a factor of two to six. In more recent transactions involving fiber optic corridors, the prices paid exceed the ATF land values by much higher multiples."[6]

B. The willing-buyer-and-willing-seller method attempts to replicate free-market negotiations over the value of the ROW. The seller considers his or her opportunity costs, or the value he or she could earn from other uses of the land. The buyer considers the income-generating potential of the ROW and the costs of alternative routes. As the potential revenue from using the ROW increases, such as the addition of cable-modem services, a willing buyer would naturally pay more to use the ROW.

C. Income-based methods of valuation start with the fact that a variety

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< http://www.apwa.net/documents/ResourceCenter/Fair_Market_Value_Analysis.pdf >

[5] *Ibid.* Pages 7-13.

[6] *Ibid.* Page 9-10.

of assets contribute to a firm's income or value. A ROW may be one of many income-generating assets from which a firm would expect to earn a reasonable return. The market value of the ROW is based on the return the asset generates for the firm.[7]

D. The comparable-transactions method estimates market value based on sales of similar ROW. While it's difficult finding comparable properties, past transactions can provide a general guide to values.

9. The US Bureau of Reclamation ("BOR") conducted a study of market values of ROW for fiber-optic lines. The report found that valuations conducted by government agencies typically underestimated the true market value of the ROW. A report that summarized the results of the BOR analysis states:[8]

> The BOR report noted that government valuation of fiber optic easements ... had not responded to the changing market conditions. Traditional across-the-fence or 'fee simple' values were the most common approach. In the private sector, however, prices were being negotiated based on market factors such as the convenience of a particular geographic route, the income stream generated, and proximity to a metropolitan area. The report concluded that 'supply and demand influences have driven the value of this type of easement to levels way beyond the fee-simple value.'

Examples of actual market values of municipally owned ROW include:

A. Denver's ROW has an acquisition value of $5.5 billion and a rental value of $483 million.[9]

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[7] Nunn, Samuel and Rubleske, Joseph. Pricing the Use of Public Rights-of-Way. *Public Works Management & Policy*. 3:4, April 1999. Pages 304-316.

[8] *National Ocean Service, supra*, Page 26.

[9] City of Dayton, Ohio. *Telecommunications Report and Plan* (no date) Page 17. < http://www.apwa.net/documents/organization/DaytonTelecomRptPln.pdf >

B. The Massachusetts Turnpike Authority sold a 135-mile ROW along Interstate 90, which it built and maintains, to a fiber-optic company for $50 million.[10]

C. According to information from the City of Portland, the approximately 2,000 miles of ROW that makes up the City's transportation system has a replacement value of $2.63 billion, measured in year 2000 dollars.[11]

10. Imposing a fee that is a percent of gross revenues is a reasonable way to price the ROW. Calculating the market value of ROW access using gross revenues has advantages over alternative methods. It is straightforward and has low transaction costs.[12] Both the municipality and the service provider can resolve the amount owed with minimal accounting and auditing. And the price paid relates directly to the value conveyed to the service provider.

11. Moreover, as I stated previously, calculating the market value of ROW as a percentage of gross-revenue is an accepted appraisal technique. Furthermore, it meets the generally accepted standard in economics for efficient compensation in exchange for goods or services, namely, a price that reflects the value of the good or service to the buyers and sellers. ROW, like other real estate assets, conveys value to occupants and other users. A service provider's use of a city's ROW conveys or adds value to that provider.

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[10] *National Ocean Service, supra,* Page 26.

[11] City of Portland, Oregon. *Portland Transportation System Status, Condition & Value.* July 2000.

[12] *Nun and Rubleske., supra.*

12. It is my understanding that cable-modem services require more elaborate cable systems than does video-only cable service, increasing the so-called "footprint" on any ROW.[13] Even if that were not the case, the increased revenue generated from the addition of cable-modem services passing through the public ROW would justify higher fees based on the economic analysis summarized in this declaration. Also, since the percent underlying the fee remains constant across different levels of revenue, the fee doesn't place new firms, whether potential or actual entrants to the industry, at a cost disadvantage relative to established firms, and therefore doesn't qualify as a barrier to entry that would delay or prevent the development of additional broadband services.

Verification

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on August 1, 2002, in Eugene, Oregon.

Ed Whitelaw

[13] Columbia Telecommunications Corporation. *The Impact of Cable Modem Service on the Public Right of Way.* June 2002. Page 1.