

**MOORPARK CITY COUNCIL
AGENDA REPORT**

To: Honorable City Council

From: John Brand, Senior Management Analyst 

Date: February 14, 2007 (CC Meeting of 02/21/2007)

Subject: Consider Resolution to Monitor and Report on Cable TV Customer Service Performance

SUMMARY

On December 6, 2006, the City Council directed staff to investigate the remedies available to the City regarding the customer service provisions of the agreement with Time-Warner Cable Television. Staff was directed to explore the possibility of drawing against the \$25,000 Security Fund letter of credit for violations of the standards of customer service for Cable TV subscribers. The \$25,000 Security Fund might be used to assess liquidated damages if particular procedures and criteria can be met. Staff was directed to specifically look at the telephone answer time requirements, as well as other violations of applicable service standards. The Council also created an ad hoc committee consisting of Mayor Pro Tem Millhouse and Councilmember Parvin to consider these matters and how the implementation of AB 2927 (the state "Digital Infrastructure and Video Competition Act Of 2006") may affect local government's relationship to cable TV services in general. Staff was further directed to notify the Ventura Council of Governments of any action taken by Council.

The ad hoc committee found that certain necessary facts, such as actual telephone answering performance, could be difficult to document satisfactorily for an assessment to be upheld. The City could face significant legal expenses, particularly if its liquidated damages assessment is challenged and overturned. Alternatively, a provision of the Municipal Code may enable the City to cause Time Warner to acquire equipment to determine compliance with the telephone answering standards and to submit regular reports to the City. The committee is forwarding a resolution to the Council for its consideration for that purpose.

BACKGROUND

As a result of the federal "Cable Television Consumer Protection and Competition Act of 1992" (1992 Cable Act), the Federal Communications Commission (FCC) established customer service standards for cable TV operators. However, the 1992 Cable Act made local franchise authorities responsible for enforcing these customer service standards. The FCC regulations state:

“Under Normal Operating Conditions, the following standards shall be met by the Franchisee at least ninety (90) percent of the time, measured quarterly.

(A) Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

(B) A customer will receive a busy signal less than three percent (3%) of the time.”

These standards were incorporated in §5.06.810 of the Moorpark Municipal Code, and they have been adopted by most local franchising authorities across the nation. Consequently, there is nothing onerous or excessive about the City’s interest in Time Warner’s performance regarding these standards of customer service. The 1992 Cable Act also gives local franchising authorities the ability to adopt more stringent standards, but the City’s Franchise Agreement stipulates that the franchisee must concur with any changes in the Municipal Code chapter on Cable Communications.

The Municipal Code and the Franchise Agreement discuss the establishment of a “Security Fund” in the form of a \$25,000 irrevocable letter of credit, those purposes for which the Security Fund may be assessed, and the procedures for remedying franchise violations.

By about August 2006 the implementation of Time Warner’s takeover of the Adelphia cable franchise in Moorpark began to generate a noticeable increase in customer questions, concerns and complaints. Many of these calls were directed to the City in its capacity as the franchise authority. The poor customer service conditions quickly came to the attention of the City Council, and the Council took action on December 6 to create the ad hoc committee.

DISCUSSION

On January 17, 2007, the Cable TV ad hoc committee (Mayor Pro Tem Millhouse and Councilmember Parvin) met and reviewed relevant portions of the Municipal Code, the Cable TV Franchise Agreement, and customer service standards for Cable TV operations adopted by other franchising agencies.

A review of the Moorpark Municipal Code and the Franchise Agreement found that while it may be an applicable and appropriate use of the Security Fund to assess Time Warner for failure to maintain the agreed upon telephone answering standards, there may be another way to remedy the problem that would strengthen the City’s ability to successfully assess damages if it subsequently becomes necessary in order to improve the customer service to cable subscribers.

Ad Hoc Committee Proposal

The Committee discussed an interim action before considering liquidated damages. This would be for the Council to consider a resolution requesting Time Warner to document its telephone answering performance and submit regular reports to the City showing a summary of its actual response times. The City's Municipal Code anticipates such an action. MMC Section 5.06.810(C) states:

“Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.”

A resolution of the Council finding conditions that warrant Time Warner to monitor its call compliance and send regular reports to the City is not an onerous request. Time Warner has routinely done this for other franchising authorities.

Should Time Warner not voluntarily utilize telephone answering compliance equipment, then the City has a lesser standard of evidence to meet to compel the company to do so. Chapter 5.06.810 of the Code contains operational standards for cable franchise grantees. Included in this section is the “thirty second” rule discussed above. The Committee found that Moorpark’s customer service standards are the same as the federal standard, and are much the same as most other local franchising authorities. The subsequent sections of the Code stipulate the steps for verification of compliance with these standards. “A repeated and verifiable pattern of noncompliance with the consumer protection standards” that is not cured within thirty days may be deemed a material breach of the franchise agreement.

A refusal by Time Warner to provide telephone answering compliance equipment is not expected. It has been made clear to the company that the Moorpark City Council is seriously concerned about cable TV customer service performance, plus the possibility of providing such equipment is written into the Municipal Code, Time Warner provides similar equipment to neighboring franchising authorities, and the City's service standards are consistent with the standards of other agencies.

Once the telephone answering compliance equipment is installed and reports are provided, the City could use the evidence Time Warner collects in its call monitoring reports to substantiate the company's progress (or lack thereof) in answering consumer complaint calls. If after implementation the Council still believes Time Warner is not satisfactorily performing then contractual remedies could be pursued. The Cable TV ad hoc Committee respectfully requests that the Council consider the attached resolution.

STAFF RECOMMENDATION

Adopt Resolution No. 2007-____.

Attachments: Draft Resolution

RESOLUTION NO. 2007-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, TO REQUIRE TIME WARNER CABLE TO MONITOR ITS CABLE FRANCHISE CUSTOMER SERVICE, TELEPHONE ANSWERING TIMES, AND OUTAGES AND TO PROVIDE REGULAR REPORTS TO THE CITY

WHEREAS, the City of Moorpark currently has standards relating to cable television customer service operational standards that a cable franchise grantee must meet or exceed; and

WHEREAS, pursuant to Moorpark Municipal Code Section 5.06.810 (c), grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards in the code unless a historical record of complaints indicates a clear failure to comply; and

WHEREAS, for the past several months, the City has received an unusually high number of complaints about Time Warner Cable's telephone answering wait times, hold periods, busy signals, service outages, and billing errors; and

WHEREAS, the City Council has determined that it is appropriate to require Time Warner Cable to acquire equipment to determine compliance with the telephone answering standards adopted by the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Moorpark hereby determines that the record of complaints received suggests a failure to comply with the City's telephone answering standards for a cable franchise grantee.

SECTION 2. The City Council of the City of Moorpark finds that in order to ensure compliance with the customer service standards of its franchise with the City, it is necessary for Time Warner Cable to take the necessary steps to acquire and install equipment which can report on telephone line(s) usage by Moorpark residents including but not limited to, a Repair Log, Outage Log, and Telephone Log consistent with reports provided to other franchising authorities in the Los Angeles and Ventura County operational area.

SECTION 3. The City Council of the City of Moorpark further finds that in order to verify compliance with the telephone answer standards adopted by the City, it is necessary for Time Warner Cable to submit the monthly customer service reports described in Section 2 to the City Manager and/or a staff designee of the City Manager

SECTION 4. The City Clerk shall certify to the adoption of the resolution and shall cause a certified resolution to be filed in the book of original Resolutions.

PASSED AND ADOPTED this 21st day of February, 2007.

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

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