

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: John Brand, Senior Management Analyst 

DATE: September 12, 2007 (CC Meeting of 9/19/2007)

SUBJECT: Consider Continued Hearing on Potential Breach by Time Warner of its Customer Service Obligations

BACKGROUND

On June 20, the Council continued its Public Hearing until September 19, and time Warner Cable requested a meeting with the Cable TV Ad Hoc Committee.

DISCUSSION

On August 15, the Moorpark City Council Cable TV Ad Hoc Committee (Mayor Pro Tem Millhouse and Councilmember Parvin) met with Time Warner Cable staff. Time Warner Cable (TWC) provided the City with a status report on its efforts to integrate former Adelphia and Comcast cable systems. In June, 2007 TWC telephone response times improved with 75.4% customer calls answered within 30 seconds with a June call volume of 964,442 customer calls. This is Time Warner's best call center performance since the Adelphia merger occurred in August 2006. Response time in July, 2007 was nearly as good, with 73% of calls answered within 30 seconds. TWC reports that these calls combine regulated calls (regarding cable TV service) with non-regulated calls for other TWC products and services such as telephone and internet service. Customer service calls regarding internet access or telephone call services are not subject to the "30-Second Rule".

The low point in TWC customer service to-date was October 2006, when 44.2% of calls were answered in 30 seconds, and the call volume was 2,154,234 for the region including Moorpark. The performance standard for the industry is for 90% of customer calls to be answered by live person within 30 seconds. Time Warner also reported on its progress to integrate billing systems and to establish specific divisional call centers by

the end of August. The City Council Ad Hoc committee had suggested that dedicated call centers would be able to provide better customer service because they will be more familiar with the products and services offered by TWC in the area. TWC has hired 1,000 new customer service representatives that are undergoing training.

Time Warner Cable appears to be making substantive efforts to restore compliance with federal customer service standards. As such staff recommends that the Hearing be closed after public comments and that staff be directed to monitor their progress keep Council informed as appropriate.

STAFF RECOMMENDATION

- 1) Open the Public Hearing, accept public testimony, and close the public hearing.
- 2) Direct staff to monitor Time Warner Cable's performance and keep Council informed as appropriate.

- Attachments:
- 1) TWC CATV Monthly Reports
 - 2) June 20 Staff Report with Attachments

Time Warner Cable
 City of Moorpark, California
 CATV Monthly Report

	Aug-06	Sep-06	Oct-06	Nov-06	Dec-06	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Jun-07	Jul-07
Repair Log*												
Headend/Transportation/Distribution	0	1	0	0	0	0	1	0	2	1	1	1
Drop	0	0	0	4	0	0	0	12	12	11	11	29
Customer Premise	0	2	0	0	2	2	0	2	6	2	2	6
Administrative	18	7	15	16	14	14	15	0	0	3	3	1
Other	155	171	180	199	236	236	216	88	99	157	157	139
	0	0	0	0	0	0	0					
Total Service Calls	173	181	195	219	252	252	232	102	119	174	174	176
Less Customer Calls	-155	-171	-180	-199	-236	-236	-216	-88	-99	-157	-157	-139
% Calls/Customers	89.6%	94.5%	0.0%	90.9%	93.7%	93.7%	93.1%	86.3%	83.2%	90.2%	90.2%	79.0%
Total Repair Calls	18	10	15	20	16	16	16	14	20	17	17	37
% Calls/Repair	10.4%	5.5%	0.0%	9.1%	6.3%	6.3%	6.9%	13.7%	16.8%	9.8%	9.8%	21.0%
Telephone Log												
Total Calls	956,157	1,683,023	2,154,234	1,748,276	1,404,961	1,641,720	1,385,937	1,072,530	1,045,537	1,111,919	964,442	925,025
% Busy Signals Received	2.6%	4.0%	2.6%	2.3%	1.5%	2.6%	0.3%	0.1%	1.7%	0.2%	0.7%	0.1%
% Calls Answered in 30 Sec	51.5%	57.6%	44.2%	48.8%	60.7%	50.8%	56.0%	66.3%	63.1%	70.4%	75.5%	73.0%
Total Calls Abandoned	70,346	60,568	236,825	466,718	298,393	427,302	301,958	119,858	127,905	103,115	52,706	62,167
% calls Abandoned	7.4%	3.6%	11.0%	26.7%	21.2%	26.0%	21.8%	11.2%	12.2%	9.3%	5.5%	6.7%

*includes non-regulated calls

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Joseph Montes, City Attorney

DATE: June 14, 2007 (CC Meeting of 6/20/2007)

**SUBJECT: Consider Hearing on Potential Breach by Time Warner of its
Customer Service Obligations**

BACKGROUND

Procedural History

The following is a partial summary of the relevant timeline:

- July 21, 2004. The City has a first reading of Ordinance 303 to regulate cable franchisees.
- September 1, 2004. The City approves, at second reading, Ordinance 303.
- Effective October 1, 2004. The City entered into a franchise agreement (the "Franchise Agreement") with Century TCI. Century TCI was owned 75% by Adelpia Communications Corporation and 25% by entities associated with Comcast. That Franchise Agreement indicated that compliance with Ordinance 303 was required. Service was provided in Moorpark under the Adelpia name.
- November 2, 2005. Via resolution 2005-2410, Moorpark consented to the transfer of the Franchise Agreement to Time Warner Cable ("Time Warner") affiliated entities. Time Warner did not begin providing service in Moorpark until August 2006.
- November 2005. Regional records indicate that for the month of November 2005, 89.8% of phone calls to customer service were answered within 30 seconds.

- March 7, 2007. The City Council continued discussion of Time Warner issues to March 21, 2007.
- March 14, 2007. The Council Ad Hoc Committee met with Time Warner and again requested Moorpark-specific information.
- March 21, 2007. The City Council directed staff to send Time Warner written notice of material default for failure to meet the customer service standards for at least the last three months.
- March 27, 2007. Joseph Montes, City Attorney, via certified mail, sent a letter to Time Warner indicating that the City made a preliminary determination that Time Warner has been in material default of its obligations "for at least the last three months for failure to meet the customer service standards of Moorpark Municipal Code 5.06.810." The City gave Time Warner 30 days to either correct the material violations or provide evidence of non-violation. This letter appears as Exhibit 1 to this staff report.
- April 18, 2007. The City Council directed staff to provide Time Warner with notice of a public hearing to be held at the June 6, 2007 Meeting.
- April 27, 2007. Time Warner sent a letter indicating that it did not believe that the standards of Municipal Code 5.06.810 apply, but rather, that the procedures of Ordinance 133 apply, namely that during normal business hours:

"a minimum of seventy-five percent (75%) of all callers for service will not be required to wait for more than sixty (60) seconds before being connected to a service representative; and further, a minimum of fifty percent (50%) of all callers will not be required to wait more than thirty (30) seconds before being connected to a service representative; in each case as measured over a period of thirty (30) consecutive days."

In that letter, Time Warner admits that for the month of March 2007, that even this more lax standard of 75% of calls being answered within 60 seconds was violated. ["72% were answered within 60 seconds"]. Time Warner acknowledged the customer service difficulties and indicated they were caused by the purchase of the Adelphia assets. Time Warner indicated that it has taken numerous steps to resolve the ongoing issues including hiring more customer service representatives,

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ninety percent (90%) of the time measured on a quarterly basis. For the purposes of this Section, "quarterly" shall mean any consecutive three (3) calendar month period, and is not necessarily coincident with a calendar quarter. . . ."

These standards are patterned after the federal standards set forth at 47 C.F.R. 76.309(c)(1)(ii),(iii), which provide:

"(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.¹"

Section 5.06.528 of Ordinance 303 and the Municipal Code provide:

"Normal Operating Conditions. "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and scheduled maintenance or upgrade of the Cable System."

¹ See 47 CFR 76.309(c)(1)(iii).

Although Time Warner has not provided Moorpark specific data, staff believes the City may rely on these data.

It should be noted that these data are not specific to the City of Moorpark, but are specific only to the general region of which Moorpark is a part. That stated, as described above, on at least three different occasions between February 2007 and March 2007, Moorpark has requested that Time Warner provide such information, and even passed a resolution to that effect. In response, on March 5, 2007, Time Warner wrote "we are not able to provide Moorpark specific telephone statistics."

2. Second Possible Finding: Instruct Staff to Provide Notice to Time Warner that the City Will Consider Imposing Liquidated Damages for Failure to Acquire and Install Equipment for Moorpark Specific Data.

Section 5.06.840 of Ordinance 303 and of the Moorpark Municipal Code requires Time Warner to provide "sufficient documentation to permit [the City] to verify Grantee's compliance" with the customer service standards. The only data provided by Time Warner is regional data. Time Warner has failed to provide data specific to Moorpark, despite repeated requests for such information, including the passage of Resolution 2007-2567. To date, Time Warner has not provided any data to suggest that the call service performance in Moorpark is any different from that experienced by the region. Accordingly, City staff has concluded that Time Warner has failed to meet the performance standards of Ordinance 303.

Federal law and Sections 5.06.810(c) of Ordinance 303 and the Municipal Code allow Moorpark to require Time Warner to "acquire equipment or perform surveys to measure compliance with the telephone answering standards [if] an historical record of complaints indicates a clear failure to comply." Staff believes that the timeline shown above demonstrates a "clear failure to comply" with the customer service requirements.

The City Council may find that there is a historical record of complaints which indicates a clear failure to comply with the customer service standards. The City Council would authorize staff to send notice that Time Warner Cable must provide this equipment within 30 days or provide evidence of non-violation, or face a finding that Time Warner is in material default of the agreement, which may include imposition of additional liquidated damages.

3 Third Possible Finding: Determine that a Breach of the Franchise Agreement and/or Violations of the Moorpark Municipal Code Have Occurred.

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2. Determine that there was a Material Breach.

If the City determines that there has been a material breach of the 90% standard, the City Council may consider the following courses of action:

- a. Conclude Time Warner Has "Commenced Corrective Action Since March 28, 2007 and Diligently Remedied Such Violation Thereafter." As described above, consistent with 2.7(a) of the Franchise Agreement, on March 27, 2007, the City sent notice that a preliminary determination has been made that Time Warner was in material breach of the Franchise Agreement, and that it "must either correct these material violations within 30 days or provide evidence of non violation in 30 days. Time Warner received that notice on March 28, 2007. Therefore, Time Warner had until April 27, 2007 to either correct the violation, or provide evidence of non-violation. As described above, Time Warner's April 27, 2007 response is attached as Exhibit 4 to this Staff Report. The City may determine that Time Warner has "commence[d] corrective action within the time prescribed [prior to April 27, 2007] and diligently remed[ied] such violation thereafter." If the City makes this determination, then the City could not impose liquidated damages.
 - b. Conclude that Time Warner Has Not Commenced Corrective Action. The City Council could conclude that Time Warner has not commence[d] corrective action [prior to April 27] and diligently remedied such violation thereafter." If the City makes this determination, it can impose liquidated damages.
3. Impose Liquidated Damages. Consistent with section 2.7(b) of the Franchise Agreement, the City Manager would request that the City Council consider imposing liquidated damages, assessable from the Security Fund, of up to Two Hundred Dollars (\$200) per day or per incident for all violations. Section 2.7(c) of the Franchise Agreement explains that if the City Council elects to assess liquidated damages, then such election will constitute the City's exclusive remedy for a period of one hundred twenty days. Thereafter, if Time Warner remains in non-compliance with the requirements of the Franchise Agreement, the City may pursue additional remedies (such as revocation of the franchise).

The amount of the liquidated damages would differ, depending upon how the City wishes to calculate the damages. Here are two permissible methods:

4. Provide Notice To Require Equipment. The City Council may authorize staff to notify Time Warner that if it fails to provide Moorpark-specific tracking equipment within 30 days or provide evidence of non-violation, it may face a finding that Time Warner is in material default of the agreement, which would allow the City to impose additional liquidated damages. It is recommended that if the City Council follows this option, that the City Council find that there is a historical record of complaints which indicates a clear failure to comply with the customer service standards.
5. Continue the Hearing. The City Council could opt to continue the hearing to allow the City to determine with more certainty the full extent of the customer service violations, and to determine whether Time Warner has cured such violations. Although it is unclear, it appears that at the subsequent hearing, even if Time Warner subsequently fixes the current violations, the City could still opt to impose liquidated damages based upon the extant violations and failures to sufficiently remedy the violations. (See 5.06.1510.A).

STAFF RECOMMENDATION

- 1) Open the public hearing, accept public testimony, and close the public hearing.
- 2) Direct staff as deemed appropriate.

Attachments: 1) Exhibit 1: City Attorney letter to Time Warner dated 3/27/2007
 2) Exhibit 2: Time Warner response letter dated 4/27/2007
 3) Exhibit 3: City Attorney letter to Time Warner dated 5/17/2007
 4) Exhibit 4: Time Warner Chart – Telephone Log

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**Mr. Stephen Pagano
Gary Matz, General Counsel
March 27, 2007
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**cc: Debi Picciolo, President, North Division, Time Warner Cable
Patricia Fregoso-Cox, Vice President, North Division, Time Warner Cable
Honorable City Council
Steven Kueny, City Manager
John Brand, Senior Management Analyst
Scott Porter, Assistant City Attorney**

being connected to a service representative; in each case as measured over a period of thirty (30) consecutive days.

In reviewing the call answering statistics, please be aware that they include calls from many other franchise areas that are served by the same call centers. These statistics also include calls regarding services other than the cable video service which is regulated under the franchise.

With this proviso, we can report that during normal business hours in the month of March, 2007 roughly 69% of the calls were answered within 30 seconds and 72% were answered within 60 seconds.

As outlined below, we are taking steps to improve phone response time and anticipate that future statistics will reflect these efforts.

We fully recognize that we have had significant challenges in answering our phones in as timely a manner as both we and our customers expect. Be assured, we will not be satisfied to simply meet the standard set in the franchise, but are determined to exceed them.

To place this entire situation in context, it should be borne in mind that the Time Warner Cable acquisition of both Adelphia and Comcast systems in Southern California and their integration into Time Warner Cable's LA Region is a merger of technical platforms, operational processes and company cultures which is of a truly unprecedented scope in the cable industry. The transaction, which closed on August 1, 2006, is widely considered to be the most complex cable transaction in the history of the industry. As you are aware, the Moorpark system was previously operated by Adelphia, a company that had been in bankruptcy for several years prior to the transfer of the system to Time Warner Cable. Due to the uncertainties and limitations inherent in operating a system in such circumstances, there was an inevitable deferral of certain decisions and improvements during the period in which Adelphia operated the system as a bankrupt company. The fact that this transfer was from a bankrupt entity has created even greater challenges than normal in an ownership transition. As such, consequent operating conditions as we have transitioned from an Adelphia to a Time Warner Cable operation have been far from normal.

The initial integration phase of the Adelphia and Comcast systems into the Time Warner Cable operation has not begun as smoothly as we had planned. Outlined below are a few of the contributing factors.

CHALLENGES

Standardization of Products and Services - When Time Warner Cable took ownership of the Adelphia and Comcast systems in Southern California, our goal was to make available to our new customers the same advanced services that had previously been available to Time Warner Cable subscribers in our former, much smaller service area. This included standardizing our channel lineups and

Organizationally, we are breaking our operation into smaller, neighborhood work areas that will bring field service employees closer to the communities they serve. As we have seen in other Time Warner Cable divisions, this community-based structure will enhance our responsiveness to our customers from both a service and an installation perspective, thus resulting in higher customer satisfaction.

In the field, we are moving from a contractor-based service model previously employed in the newly acquired systems to Time Warner Cable employee-based field technician model to further ensure quality control.

E-mail Migration - The Comcast e-mail migration is behind us and will not be a recurring problem.

Customer Service Improvements - Since the transition, we have been aggressively hiring and training call center representatives to address our customers' needs.

When we took over operation of the consolidated system, there were approximately 1,350 call center agents working in six local call centers to address our subscribers' needs. There were no layoffs or downsizing. At end of 2006, we grew our customer service ranks to more than 1,650 customer service agents and today, we have approximately 2,000 call center professionals trained and on the job to serve our subscribers. In addition to hiring more field technicians and customer service agents, Time Warner Cable has added staffing in our lobbies, thereby bringing significant employment opportunities to the Greater Los Angeles Area.

These new employees receive Time Warner Cable's full compliment of 160 hours of classroom training as well as 80 hours of supervised on-the-job training to ensure the highest quality of customer service. Our ongoing education and training of our existing call center agents continues.

Of course, it takes most new employees some initial time in the job even after training to become acclimated. We believe our newer employees are now adapting and their efforts are reflected in the improvements in phone answering over the past few months.

New Management Team - As you may be aware, we have recently put in place a new senior management team in Los Angeles with a combined 50 years of experience in operating a cable system in an urban environment.

Our newly appointed Executive Vice President, Barry Rosenblum has overseen the New York City system and successfully executed the integration of multiple systems there. Mr. Rosenblum's responsibilities will be our two major urban systems in Southern California and New York, exclusively, with the majority of

May 17, 2007

John E. Fogarty
Vice President and Asst. Chief Counsel
Time Warner Cable
290 Harbor Drive
Stamford, CT 06902

Re: Notice of Public Hearing on Violations of Cable Franchise Obligations

Dear Time Warner Cable:

This office serves as the City Attorney for the City of Moorpark ("Moorpark") and writes on its behalf. This letter provides notice of a public hearing and responds to your letter dated April 27, 2007.

Notice of Hearing

With regards to the public hearing, please be advised that the Moorpark City Council will have a public hearing at its regularly scheduled City Council meeting of June 20, 2007 at 7 p.m., or as soon thereafter as the item may be heard, to consider whether Time Warner Cable ("Time Warner") is in material default of its obligations under the Franchise Agreement and the standards which are set forth in Moorpark Municipal Code § 5.06.810.

At the public hearing, Time Warner will have the opportunity to address the City Council and provide evidence that no material violation has occurred, that Time Warner has corrected the alleged violations; or that Time Warner has diligently commenced correction of such alleged violation and is diligently proceeding to fully remedy such alleged violations.

The Standards Set Forth in Moorpark Municipal Code § 5.06.810 Apply.

With regards to your letter dated April 27, 2007, you assert that the standards in Moorpark Municipal Code §5.06.810 do not apply because they were adopted in a June 2005 ordinance. Actually, those standards were adopted in 2004, prior to the effective date of your franchise.

Recital 7 of the franchise agreement provides:

	Nov-05	Dec-05	Jan-06	Feb-06	Mar-06	Apr-06	May-06	Jun-06
Repair Log*								
Headend	3	2	0	0	0	2	0	0
Transportation	1	3	0	0	0	0	0	2
Distribution	0	0	7	0	5	0	0	0
Drop	21	23	22	14	22	28	28	20
Customer Premise	199	231	189	183	147	178	155	192
Administrative	0	0	0	0	0	0	0	0
Total Service Calls	224	259	218	197	174	208	183	214
Less Customer Calls	-199	-231	-189	-183	-147	-178	-155	-192
% Calls/Customers	88.8%	89.2%	86.7%	92.9%	84.5%	85.6%	84.7%	89.7%
Total Repair Calls	25	28	29	14	27	30	28	22
% Calls/Repair	11.2%	10.8%	13.3%	7.1%	15.5%	14.4%	15.3%	10.3%
Outage Log								
Total Outages	1	2	1	0	1	2	1	3
Total Minutes	70	125	330	0	60	135	110	498

Telephone Log*

Total Calls	841,283	852,755	866,654	883,991	809,838	847,218	848,625	902,279
% Busy Signals Received	0.5%	1.1%	3.2%	2.4%	2.3%	2.4%	2.4%	2.4%
% Calls Answered in 30 Sec	89.8%	93.3%	78.0%	75.6%	75.6%	81.1%	75.0%	84.6%
Total Calls Abandoned	10,389	6,098	23,673	21,758	19,114	12,152	20,898	13,089
% calls Abandoned	1.2%	0.7%	2.7%	2.5%	2.4%	1.4%	2.5%	1.5%

**This was a major outage due to damaged fiber optic lines that had to be respliced.
 ***This was due to a burned fuse. Replaced fuse system restored.

*NOTE: Due to the integration of Adelphia and Time Warner's call centers, the August 2006 telephone log reflects only partial information.

Exhibit 4
Quarterly (90 Day) Summaries

Report Summary Dec-06 - Feb-07 Sep-06 - Nov-06 June-06 - Aug-06 Mar-06 - May-06 Dec-05 - Feb-06

Repair Log

Headend	1	1	0	2	0
Transportation	0	4	4	0	3
Distribution	4	2	2	5	7
Drop	43	38	54	78	59
Customer Premise	688	550	493	480	603
Administrative	0	0	0	0	0
Total Service Calls	736	595	553	565	674
Less Customer Calls	-688	-550	-493	-480	-603
% Calls/Customers	93.5%	92.4%	89.1%	84.9%	89.6%
Total Repair Calls	48	45	60	85	71
% Calls/Repair	6.5%	7.6%	10.9%	15.1%	10.4%

Outage Log

Total Outages	6	2	1	0	1
Total Minutes	815	95,150	330	0	60

Telephone Log

Total Calls	4,432,618	5,585,533	2,720,990	2,505,681	2,603,400
% Busy Signals Received	1.5%	3.0%	2.5%	2.4%	2.2%
% Calls Answered in 30 Sec	55.8%	50.2%	69.0%	77.2%	82.3%
Total Calls Abandoned	1,027,653	764,111	107,841	52,164	51,529
% calls Abandoned	23.2%	13.8%	3.9%	2.1%	2.0%