

# **EXHIBIT D**

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>



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March 5, 2013

Ms. Sharon L. Hanson  
Director of Government Relations  
Time Warner Cable  
2875 Union Road, Suite 359  
Cheektowaga, NY 14227

Dear Ms. Hanson,

Thank you for your letter dated July 25, 2012, regarding Time Warner Cable's (TWC) response to the Department of Public Service Staff's (Staff) franchise fee audit on behalf of the City of Buffalo (the City) for calendar years 2008 – 2009. As indicated in my previous correspondence, final payment terms are the matter of discussions between TWC and the City. I, therefore, encourage the City and TWC to discuss any remaining issues. However, in order to facilitate further discussions between the City and TWC, I am providing Staff's response to your July 25, 2012 correspondence.<sup>1</sup> Be advised, that Staff is not speaking on behalf of the Commission and its response is not binding.

First, TWC identifies three adjustments that it claims are properly excluded from the definition of "Gross Revenues" pursuant to the franchise agreement at Section 1.0 and, therefore, TWC believes these should not be subject to the franchise fee payment owed to the City. The specific adjustments are Field Collection Trip Charge, Live Agent Payment Fee and Processing Fee. According to the franchise agreement, "Gross Revenues" are defined as "... all revenue derived directly or indirectly by the franchisee from cable service ... , however, that Gross revenues shall not include ... any reasonable fees paid to collect past amounts due and owing from subscribers." Regarding the Live Agent Payment and Processing Fee, TWC has not demonstrated that these adjustments are explicitly related to the collection of past amounts due and, therefore, these adjustments are legitimately included in the definition of gross revenue. Regarding the Field Collection Trip Charge, while Staff agrees this adjustment may be excluded from the definition of gross revenue, we note that TWC's cash adjustment report demonstrates that part of the franchise fees collected from subscribers included the Field Trip Charge and, therefore, it was collected as part of TWC's gross revenues upon which the franchise fee owed to the City is calculated. Second, TWC states that sales "commissions" were never booked as revenue and thus not included in the definition of gross revenues. Since sales commissions are not explicitly excluded from the definition of gross revenues under the current franchise agreement, it should be included in

<sup>1</sup> My initial audit result letter dated December 6, 2011, requested TWC's response to Staff's findings within 10 days. TWC did not respond within that timeframe, but staff is providing a response herein nonetheless.

the calculation upon which the franchise fee to the city is owed. Finally, while TWC submits that it agrees that franchise fee payments to the City should be revised to reflect the Commission's Final Assessment, it does not appear that the calculations reflect this acknowledgment.

Thank you for your time and attention to this matter. I hope this will facilitate a mutually agreeable resolution. Please contact me at (518) 473-2869 if you should desire to discuss this matter further.

Sincerely,



David Shahbazian, Senior Auditor

cc: Ms. Carol McTague, Municipal Assistance Section, NY State Department of Public Service  
Mr. Tom Tarapacki, Director of Telecommunications, Utilities & Franchises, City of Buffalo.