

# **EXHIBIT C**

STATE OF NEW YORK DEPARTMENT OF PUBLIC  
SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

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

PUBLIC SERVICE COMMISSION

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PETER McGOWAN  
*General Counsel*

JACLYN A. BRILLING  
*Secretary*

February 3, 2012

Mr. Tom Tarapacki  
City of Buffalo  
613 City Hall  
Buffalo, NY 14202

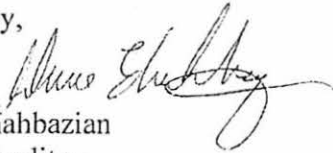
Dear Mr. Tarapacki,

At the request of the City of Buffalo (the City), Staff at the Department of Public Service (Staff) have completed a compliance review of the adequacy of franchise fee payments made by Time Warner Cable (TWC) to the City under the cable franchise agreement for years ended December 31, 2008, and 2009. Staff informed TWC of the audit findings in a letter dated December 6, 2011. Staff has no record of a response from TWC. A copy of the letter is attached for your review.

Based upon the review of TWC's documentation, Staff's findings show that TWC owes the City an additional \$57,653 in additional franchise fee payments for the years ended December 31, 2008, and 2009, due to the exclusion of assessable revenues. Please refer to the attached December 6<sup>th</sup> letter for details and explanations of the findings. Staff reserves its right to revisit the findings herein, should new or material facts or issues arise.

A copy of this letter is being provided to TWC. Final payment terms are the matter of discussions between TWC and the City. Please contact me at (518) 486-2839 should you have any questions about the audit results. Please contact Mr. John Figliozzi of the Municipal Assistance section of the Office of Telecommunications, at (518) 473-5264, here at the Department of Public Service, if you need assistance in discussing payment issues with TWC or with other franchising matters.

Sincerely,

  
Dave Shahbazian  
Senior Auditor

Enclosure

cc:  Mr. Terence Rafferty, President Western NY Region, Time Warner Cable  
Ms. Carol McTague, Municipal Assistance Section, Department of Public Service

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December 6, 2011

Mr. Terence Rafferty, President  
Time Warner Cable WNY Division  
71 Mt. Hope Avenue  
Rochester, NY 14620

Dear Mr. Rafferty,

At the request of the City of Buffalo (City), Department of Public Service staff (Staff) performed a review of the franchise fee payments made by Time Warner Cable (TWC or the Company) pursuant to the cable franchise agreement. This review covered calendar years 2008 and 2009. Staff's review indicates that the Company's franchise fee payments to the City were deficient by the amount of \$57,653 for calendar years 2008 through 2009 (\$29,240 and \$28,413 respectively). Staff's findings are summarized below.

1. Franchise Fee Requirement:

The franchise agreement between the City and the Company specifies that TWC pays the City a five percent fee each quarter based upon gross revenues within 45 days after the calendar quarter-end each year. The Franchise agreement defines Gross Revenues as "all revenue derived directly or indirectly by the Franchisee from Cable Service and any additional service provided with in the City via the Cable Communications System pursuant to the authority of this Agreement and the Franchise granted hereby, in so far as such additional services are regulated by the City, provided, however, that Gross Revenues shall not include any deposits received and held for converters or other equipment supplied by Franchisee, refunds, receipts from sales, use or collects on behalf of the City or any other tax authority or any reasonable fees paid to collect past amounts due and owing from subscribers".

2. Review Methodology:

Staff reviewed the franchise fee payment reports and documentation for the audit period provided by TWC. These reports were used to verify monthly revenue amounts reported by TWC. Staff's review sampled several categories of cable revenue by reconciling the Company's detailed reports to the Company's summary data reported in its franchise fee payment reports provided to the City. The Public Service Commission (PSC)

assessment fees were also reviewed to ensure the appropriate rate was applied as an offset to the franchise fee payments (not to exceed 5%) were properly used in the Company's calculation.

### 3. Summary of Findings and Description of Exhibits:

The audit report detail consists of 6 pages. There is a summary page for each 2008 and 2009 which identifies the impact of each of the 3 exhibit adjustments that Staff is recommending. The 4<sup>th</sup> exhibit is a copy of the PSC Final Statement of Assessment.

Exhibit 1 provides a detailed list of adjustment minors that should be linked to revenue accounts but there was no evidence to show that the adjustment income was in fact being recorded as revenue for the sake of the franchise fee calculation. This appears to be a computer programming issue and raises concern that this situation maybe impacting the franchise fee calculations for other municipalities. In addition, there were several months of detailed reports which were not available for review which hindered the reconciliation effort.

Exhibit 2 highlights a situation where gross DADV advertising revenues were being reduced by sales commissions prior to being included in the franchise fee calculation. Sales commissions are not defined in the franchise agreement as a legitimate reduction to gross revenues. In addition, the Company appears to have used an approximate average instead of the true ratio of Buffalo subscribers to Total subscribers when making the allocation of advertising revenue attributable to the City.

Exhibit 3 shows the amounts the Company adjusted the franchise fee amount by for the PSC rate. However, the rate utilized by the Company was based upon the Estimate of Assessment which was later revised to a Final Assessment. The Final Assessment was \$44,617 less than the Estimated Assessment, as a result, the overpayment was returned to the Company. There was no evidence to show that TWC revised the PSC rate downward to reflect the returned overpayment as it relates to the franchise fee calculation.

### 4. Response:

Your written response to Staff's findings is requested within ten (10) days of service. If you agree with the findings, please clearly state so. If you disagree with any of the findings herein, please fully explain and support your position. After we review your response, we will provide our findings to the City, along with your comments. Final resolution of the amount owed and terms of payment are a matter of discussion between TWC and the City. Our municipal Assistance Staff is available to assist you in resolving these matters. Please contact me at (518) 486-2839 if you have any questions concerning this review.

Sincerely,

David Shahbazian  
Senior Auditor

Enclosures

cc: Ms. Carol McTague, Municipal Assistance Section, NY State Department of Public Service