

# **EXHIBIT B**

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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November 3, 2005

Johanna F. Brennan,  
Municipal Attorney  
City of Rochester  
City Hall, Room 400-A  
30 Church Street  
Rochester, New York 14614-1295

Re: City of Rochester / Time Warner Franchise Fee Review, 1999 - 2004

Dear Ms. Brennan,

I have calculated the amount of additional franchise fee payments in amount of \$1,062,407 that I feel are owed to the City under the franchise requirement for the six year period 1999 through 2004. This amount of additional franchise fee payments is predicated upon my calculation of \$21,767,814 of total assessable revenue that was excluded from the franchise fee payment calculation for the six year period 1999 through 2004 including:

Revenue Category	Amount of Excluded Revenue	Franchise Fee Payment Due
Annual Public Access Grant	\$1,717,683	\$ 83,830
Franchise Fees Collected	9,563,706	466,735
Collection & Late Charge Fees	4,875,504	237,946
Returned Item Handling Fees	2,630,831	128,400
Digital Converter & Remote Charges	2,964,589	144,739
FCC Regulatory Fees Collected	15,501	757
Total Amount	<u>\$21,767,814</u>	<u>\$1,062,407</u>

My findings for the calendar years 2001 and 2002 were based upon my desk audit of explanations and documentation provided by Time Warner. Please see my

attached letter of February 18, 2005 that in part included revenue adjustments recommended in Time Warner's letter of January 24, 2005 to you. My calculations for the calendar years 1999, 2000, 2003, and 2004 were based upon the total desk audit results for 2001 and 2002, which indicated a composite 11.55% of revenues beyond the reported amounts to have been excluded from the franchise fee payment calculations. Please see my attached letter of October 3, 2005 to Time Warner. Exhibits A and B show the calculation of the 11.55% excluded revenue and its components. Exhibits C, D and E show my calculation on an estimated basis of additional franchise fee payments determined to be due for the calendar years 1999, 2000, 2003, and 2004.

For your reference, I have attached a copy of Time Warner's most recent response of October 26, 2005.

The findings expressed in this letter are based upon my interpretation of the franchise obligation. In addition I performed a desk audit of the company's calculations for 2001 and 2002 and an estimate of the company's franchise fee obligations for the years 1999, 2000, 2003 and 2004, to expedite the culmination of this project. Should new or material facts or issues come to light, Department staff reserves its right to revisit the calculations herein.

The ultimate resolution of franchise fee obligation and payment issues is a matter of discussion and interaction between the City and Time Warner due to the contractual nature of the obligation. However, please call me at phone number (518) 473-5253 if you have any questions with respect to the numbers herein. Please contact John A. Figliozi, Acting Chief – Cable Municipal Assistance at phone number (518) 473-5264 for further assistance in resolving these issues.

Sincerely yours,



Kevin C. Hillegas,  
Public Utilities Auditor 2

Enc My Letter of Findings dated October 3, 2005 for 1999 to 2004.  
My prior Letter of Findings dated February 18, 2005 for 2001 and 2002.  
Most recent response of Time Warner, dated October 26, 2005.

Cc Brian Wirth, Time Warner  
Chad Hume, DPS  
John Figliozi, DPS