

COMPUTEL CONSULTANTS

P.O. Box 35 ♦ Earlville, New York 13332 ♦ (800) 724-9859 ♦ Fax (315) 691-4311

October 5, 2007

Jaclyn A. Brillig
Secretary to the Commission
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 12223-1350

PUBLIC SERVICE COMMISSION
RECEIVED

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FILES
ALBANY, N.Y.

Subject: Complaint Regarding Time Warner Cable Franchise Fee Payments to the Town of Clarkson

Dear Ms. Brillig:

Computel Consultants has been contracted by the Town of Clarkson, New York to conduct an audit of its cable television franchise fees. A copy of the letter of authority is enclosed. Time Warner provided financial data for a six year time period prior to the commencement of our audit. Our review of financial data revealed that franchise fees collected from subscribers have been excluded from the calculation of gross revenues in each of the periods for which data was provided, 2001 through 2006. Such exclusion constitutes a violation of Commission rules.

On June 18, 2007, Computel notified Time Warner of the apparent discrepancy (Attachment A). Further attempts to discuss this matter with Time Warner have proved unsuccessful. In fact, to date Time Warner has not responded to the original complaint, or any of the follow up inquiries regarding its status, leaving the Town with no choice but to make this filing.

The exclusion of franchise fees collected from subscribers from the calculation of gross revenues not only violated Section 595.1(o) of Commission rules, it also violated one of the conditions of the applicable Commission franchise renewal order. On March 27, 2001, the Commission issued an Order Approving Renewal in Case 97-V-0215 (Attachment B), for the Time Warner franchise

with the Town of Clarkson. That Order specifically addressed the issue raised in this complaint.


While stating that the renewal agreement substantially complied with Commission rules, the

Order spelled out a number of exceptions. The fourth exception stated:

Fourth, the definition of gross annual receipts in Section 2 of the agreement excludes "any other taxes or fees, which are imposed on the Grantee or any subscriber by any governmental unit and collected by the grantee for such governmental unit." To the extent that this clause may also exclude franchise fees from the calculation of gross annual receipts, the parties are reminded that Section 595.1(o) of our rules requires that the revenue base not be less than the revenues received directly from subscribers for any cable services purchased on a regular, recurring monthly basis. Therefore, franchise fees shall be included as part of the revenue base when calculating franchise fees pursuant to Section 26 of the Agreement.

Consistent with the Commission's Ruling in Case 05-V-0210, et al., we respectfully request that Time Warner be ordered to pay the Town of Clarkson all underpaid franchise fee amounts due for the period beginning six years prior to June 2007 through the payment date. Given that Case 05-V-0210, et al. is still open, we ask that the Town of Clarkson complaint be included with the other complaints in that Case.

Sincerely,



Michael T. Caton
Partner

Enclosures

CC: William Ey, Town of Clarkson
John Fogarty, Time Warner Cable

P.O. Box 35, 5 East Main Street ♦ Earlville, New York 13332 ♦ (315) 691-4310 ♦ Fax (315) 691-4311

June 18, 2007

Via email

Mr. Brian Wirth
Time Warner Cable – Rochester Division
71 Mt. Hope Avenue
Rochester, New York 14620-1090

Re: Town of Clarkson Franchise Fees

Dear Mr. Wirth:

We are in receipt of the financial data for the Town of Clarkson. In reviewing the data we have identified two items that appear to be examples of non-compliance with the Town's existing franchise agreement. Please review these items and respond to our office at your earliest convenience.

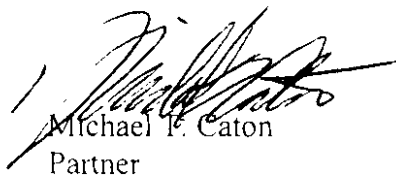
In reviewing data for the years of 2001 through 2006, it is apparent that Time Warner has excluded money collected from subscribers and allocated to franchise fees, from the calculation of Gross Revenues. As you know, this has resulted in an underpayment of franchise fees to the Town.

In addition, for all years reviewed, Time Warner deducted PSC Fees from franchise fees paid to the Town. I am not aware of anything in the franchise agreement authorizing such a deduction.

Please address these issues and provide our office with details regarding the annual underpaid amounts. As the pass through of franchise fees to subscribers is optional, please be advised that the Town of Clarkson does not believe that any of these amounts should be subject to a pass through, particularly in light of the facts in this instance. In addition to being aware of regulatory requirements to include franchise fees in gross revenues, Time Warner did not comply with a key provision of the March 27, 2001, PSC Order Approving Renewal. The Order states, "the definition of gross annual receipts in Section 2 of the agreement excludes any other taxes or fees, which are imposed on the Grantee or any subscriber by any governmental unit." To the extent that this clause may also exclude franchise fees from the calculation of gross annual receipts, the parties are reminded that Section 595.1 (o) of our rules requires that the revenue base not be less than the revenues received directly from subscribers for any cable services purchased on a regular, recurring monthly basis. Therefore, franchise fees shall be included as part of the revenue base when calculating franchise fees pursuant to Section 26 of the Agreement." In any event, should Time Warner choose to propose a pass through of any related amounts, please provide details on the monthly impact to individual subscribers. Perhaps the easiest way to address this request would be to email me a spreadsheet with your underpayment calculations (mcaton@computel-consultants.com).

Please provide the requested information as soon as possible, so that the Town can make an evaluation of it in a timely fashion. Please don't hesitate to contact me with any questions you may have.

Sincerely,



Michael F. Caton
Partner

Cc: Bill Ey, Town of Clarkson (via email)
John Fogarty, Time Warner (via email)
Rich Glickman, Time Warner (via email)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 22, 2001

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 97-V-0215 - Application of Time Warner Entertainment
Company-Advance/Newhouse Partnership d/b/a Time
Warner Communications-Rochester System for
approval of the renewal of its cable television
franchise for the Town of Clarkson (Monroe
County).

ORDER APPROVING RENEWAL

(Issued and Effective March 27, 2001)

BY THE COMMISSION:

The above-captioned application of Time Warner
Entertainment Company-Advance Newhouse Partnership d/b/a Time
Warner Communications-Rochester System was filed on November 17,
2000. A copy of the application was served on the Town and all
local notice requirements were fulfilled. No comments or
objections have been received.

This application is governed by Section 222 of the
Public Service Law which requires our approval unless we find
specific violations of law, Commission regulations or the public
interest. Section 222(4) of the statute provides that we may
approve the renewal contingent upon compliance with standards or
conditions consistent with the public interest. Having reviewed
the application in the context of applicable statutory and
regulatory standards, we have determined to approve the renewal
subject to conditions as hereinafter set forth.

this order that Section 595.1(s) will be deemed a part of this agreement as if specifically set forth herein.

Fourth, the definition of gross annual receipts in Section 2 of the agreement excludes "any other taxes or fees, which are imposed on the Grantee or any subscriber by any governmental unit and collected by the grantee for such governmental unit." To the extent that this clause may also exclude franchise fees from the calculation of gross annual receipts, the parties are reminded that Section 595.1(o) of our rules requires that the revenue base not be less than the revenues received directly from subscribers for any cable services purchased on a regular, recurring monthly basis. Therefore, franchise fees shall be included as part of the revenue base when calculating franchise fees pursuant to Section 26 of the Agreement.

Finally, the franchise agreement contains additional provisions not required by Part 595 of the Commission's rules. Our approval of these provisions will be granted to the extent that they pertain to the provision of cable service and are, and remain, consistent with Article 11, our regulations, policies and orders and applicable federal statutes and regulations. In the event of an ambiguity in any such provision, or among separate provisions, the provision will be construed in the manner most favorable to the franchisor.

The Commission orders:

1. Pursuant to Section 222 of the Public Service Law and the rules and regulations of this Commission, the application of Time Warner Entertainment Company-Advance/Newhouse Partnership d/b/a Time Warner Communications-Rochester System for renewal of its cable television franchise for the Town of Clarkson (Monroe County) is hereby approved, subject to



TOWN OF CLARKSON

FRANCES WILCOX
TOWN CLERK

3710 Lake Road, P.O. Box 858
Clarkson, New York 14430

Tel. 585-637-1130
Fax 585-637-1138

To: Time Warner Cable

Dear Representative:

This is to advise you that Computel Consultants (P.O. Box 35, Earlville, NY 13332; (315) 691-4310) is hereby engaged and authorized to act as agent and consultant for the undersigned in matters related to the review of our Cable Television Franchise Agreement.

You are authorized and requested to respond to Computel in all matters pertaining to our franchise agreement with your company. We request that you provide Computel with financial records, equipment records, service records, or any additional information deemed necessary by Computel to verify compliance with the terms of our franchise agreement. Computel is authorized to file and negotiate underpayment of franchise fee claims on our behalf and to represent our interests in relevant proceedings before the Public Service Commission.

Sincerely yours,

Paul Kraball Authorized Signature

2-27-07 Date

TOWN OF CLARKSON Corporate Name

3710 LAKE RD
P.O. BOX 858 Address

CLARKSON, N.Y. 14430 City, State, Zip