AUDIT REPORT

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Compliance of TW Telecom with Its City Franchise Agreement January 1, 2006–December 31, 2007

FN09-064A

June 25, 2009

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of TW Telecom with the terms of its franchise agreement with the New York City Department of Information Technology and Telecommunications (DoITT).

TW Telecom is a leading provider of managed network services, including data, Internet access, and local and long distance telephone services. Under the agreement, TW Telecom is required to pay the City a franchise fee consisting of the greater of either $200,000 or five percent of its annual gross revenue from telecommunication services. We audit private parties such as this that operate under agreements with the City as a means of ensuring that they comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials of TW Telecom and DoITT, and their comments have been considered in preparing this report. Their complete written responses are included in this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

William C. Thompson, Jr.

William C. Thompson, Jr.

WCT/fh

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The City of New York
Office of the Comptroller
Bureau of Financial Audit

Audit Report on the Compliance of TW Telecom with Its City Franchise Agreement January 1, 2006–December 31, 2007

FN09-064A

AUDIT REPORT IN BRIEF

TW Telecom is a leading provider of managed network services, including data, Internet access, and local and long distance telephone services. TW Telecom provides services under a 15-year franchise agreement with the City through the Department of Information Technology and Telecommunications (DoITT).

Under the franchise agreement, TW Telecom is required to pay the City a franchise fee consisting of the greater of either $200,000 or five percent of its annual gross revenue from telecommunication services. In addition, TW Telecom is required to maintain a minimum combined amount of $50 million in insurance for bodily injury and property damage, and maintain an unconditional letter of credit and surety bond deposit totaling $1 million.

For the audit period, January 1, 2006, through December 31, 2007, TW Telecom reported gross revenues to the City totaling $31.1 million and paid $1.5 million in related franchise fees.

Audit Findings and Conclusions

TW Telecom failed to report to the City a total of $10,120,278 in additional gross revenue and did not make all its payments on time, as required in the agreement. It therefore owes the City an additional $914,871 in franchise fees and related late interest charges. Specifically, TW Telecom did not report to the City $6,777,471 in revenue it collected by charging a five percent franchise fee to its customers from January 1, 2003 through December 31, 2007, did not report $1,162,083 for its third and fourth quarters of calendar year 2007, and inappropriately excluded $2,180,724 from the gross revenue amount it reported to the City. TW Telecom, however, complied with the other non-revenue-related requirements of its agreement with the City, such as maintaining the required $50 million property and liability insurance that named the City as an additional insured party, and maintained an unconditional letter of credit and surety bond deposit totaling $1 million.

Audit Recommendations

Based on our findings, we make five recommendations:

We recommend that TW Telecom:

- Pay the City $856,767 in additional franchise fees and late charges.
- Report to the City all revenue generated from franchise fees charged to customers.
- Submit the calculations of franchise fees in sufficient detail to the City.

We recommend that DoITT:

- Ensure that TW Telecom pays the $856,767 in additional franchise fees and late charges recommended in this report and complies with the report's other recommendations.
- Ensure that franchise fee calculations and other financial reports are properly submitted and reviewed in a timely manner, and establish proper guidelines to monitor TW Telecom's compliance with its City agreement.

INTRODUCTION

Background

On December 20, 1993, Time Warner A x S of New York City, L.P. and the City of New York entered into a 15-year franchise agreement for local high-capacity telecommunications services. In July, 1998, the company reorganized into Time Warner Telecom LLC, and in July 2008, the company changed its name to TW Telecom. The Department of Information Technology and Telecommunications (DoITT) is responsible for monitoring TW Telecom's compliance with the franchise agreement.

TW Telecom is a leading provider of managed network services, including data, Internet access, and local and long distance telephone services. Its customers include long distance carriers, wireless communications companies, and organizations in healthcare, finance, higher education, manufacturing, and hospitality industries, as well as state and, local government and the military.

Under the franchise agreement, TW Telecom is required to pay the City a franchise fee consisting of the greater of either $200,000 or five percent of its annual gross revenue from telecommunication services. The agreement also requires TW Telecom to submit to the City quarterly gross franchise fee calculation reports with payments made no later than 45 days after the last day of March, June, September, and December. In addition, TW Telecom is required to maintain a minimum combined amount of $50 million in insurance for bodily injury and property damage, and maintain an unconditional letter of credit and surety bond deposit totaling $1 million. For the audit period, January 1, 2006, through December 31, 2007, TW Telecom reported gross revenues to the City totaling $31.1 million and paid related fees totaling $1.5 million.

Objectives

The objectives of this audit were to determine whether TW Telecom:

- accurately reported its gross revenue and properly calculated and paid the appropriate fees due the City on time, and
- complied with certain non-revenue-related requirements of its agreement (i.e., maintained the required insurance and maintained the proper letter of credit and surety bond).

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was January 1, 2006, through December 31, 2007. However, based on the results of our preliminary review, we expanded our scope for certain audit tests to calendar years 2003–2005. To achieve our audit objectives, we reviewed the telecommunication franchise agreement between TW Telecom and the City and identified relevant terms and conditions. We reviewed correspondence, TW Telecom's franchise fee calculation reports, and other relevant documents on file at DoITT to ascertain whether TW Telecom submitted the required revenue reports and paid the fees due the City on time.

To obtain an understanding of TW Telecom's operating procedures, we conducted walk-through meetings with TW Telecom officials and familiarized ourselves with the sales, billing, accounting, and record-keeping functions. We documented our understanding in narratives and memoranda. In addition, we reviewed the company's chart of accounts, general ledger, trial balance, and statement of operations and performed a preliminary review of TW Telecom's billing reports to identify any unusual trends and to serve as a basis for our detailed testing.

In assessing the reliability of TW Telecom's financial data reported to the City, we considered the opinion[1] issued by Ernst & Young on the fairness of TW Telecom's financial statements and the effectiveness of its internal controls over financial reporting for calendar year 2006. In addition, we conducted limited tests of controls over revenue transactions on TW Telecom's billing reports generated by Convergent Billing Platform/EUR Systems, and on the general ledger reports generated by PeopleSoft, TW Telecom's accounting and reporting software. For our limited test, we used a judgmental sampling methodology. We selected 51 customer bills from the first quarter of 2006, the period with the highest gross revenues reported to the City. We traced the activity appearing on the individual customer's bill to the amounts recorded in the billing report for completeness. We then compared the total amount on the billing report to the transactions recorded in the general ledger for accuracy. To determine whether TW Telecom appropriately reported its revenue in accordance with the franchise agreement, we reviewed all itemized charges in the customers' bills and traced the amounts to the billing report. The results of our tests, while not projectable, should provide reasonable assurance that we have obtained sufficient and appropriate evidence to determine TW Telecom's compliance with the franchise agreement in reporting applicable revenue.

To determine whether TW Telecom properly reported all its gross revenue to the City, we reviewed all revenue accounts in TW Telecom's chart of accounts and traced each account to the general ledger and trial balance reports for completeness. We summarized all the revenue accounts in the general ledger and traced the total amount to the trial balance and to the statement of operations. In addition, we analyzed the detailed revenue transactions and revenue category totals reported in the billing report and traced the amounts to the general ledger and trial balance. We then compared the total revenue to the amounts reported in the franchise fee calculation report submitted to the City for the period January 1, 2006, through December 31, 2007.

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[1] "In our opinion, management's assessment that Time Warner Telecom Inc. maintained effective internal control over financial reporting as of December 31, 2006, is fairly stated, in all material respects, based on COSO [Committee of Sponsoring Organizations of the Treadway Commission] criteria."

To ascertain whether revenue exclusions and adjustments were appropriate and accurately calculated, we reviewed and identified all revenue categories in the quarterly franchise fee calculation report submitted to the City. We also reviewed TW Telecom's bad-debt account and determined whether TW Telecom properly recorded its bad-debt expenses and whether the amounts were appropriately excluded from the gross franchise fee calculation report submitted to the City.

Finally, to determine whether TW Telecom complied with the non-revenue-related terms and conditions of its agreement, we reviewed insurance certificates to determine whether TW Telecom maintained the required insurance coverage. We also reviewed surety bond records to determine whether TW Telecom maintained the required deposits with the City.

Discussion of Audit Results

The matters covered in this report were discussed with TW Telecom officials during and at the conclusion of this audit. A preliminary draft report was sent to TW Telecom and DoITT officials and discussed at an exit conference held on April 24, 2009. After the exit conference, TW Telecom officials provided us with a statement of their interpretation the issues discussed in the preliminary report. On May 8, 2009, we submitted a draft report to TW Telecom and DoITT officials with a request for comments.

We received written responses from DoITT and TW Telecom officials on May 22, 2009. In their response, TW Telecom officials stated that "we believe compensation paid under our Franchise Agreement does constitute a tax and should be excluded from gross revenue." They also argued that revenue from new products should not be reported to the City.

DoITT officials agreed with the audit assessment and stated that "DoITT has reviewed the underpayment and late charges identified in the draft report, and will seek TW Telecom's compliance with this financial determination." However, DoITT officials took exception to the report's other issue regarding DoITT's improper oversight.

The full texts of TW Telecom and DoITT responses are included as addenda to this report.

FINDINGS

TW Telecom failed to report to the City a total of $10,120,278 in additional gross revenue for the period of January 1, 2003 to December 31, 2007, and did not make all its payments on time, as required in the agreement. It therefore owes the City an additional $914,871 in franchise fees and related late interest charges. Specifically, TW Telecom did not report to the City $6,777,471 in revenue it collected by charging a five percent franchise fee to its customers, did not report $1,162,083 for its third and fourth quarters of calendar year 2007, and inappropriately excluded $2,180,724 from the gross revenue amount it reported to the City, as shown in Table I below. TW Telecom, however, complied with the other non-revenue-related requirements of its agreement with the City, such as maintaining the required $50 million property and liability insurance that named the City as an additional insured party, and maintained an unconditional letter of credit and surety bond deposit totaling $1 million.

Table I
Additional Fees and Interest Owed
Based on Unreported Revenue
Calendar Years 2003–2007

Revenue Categories	Underreported Revenue	Franchise Fees Due	Late Fees Assessed	Total Due the City
Franchise Fee Revenue Not Reported to the City	$ 6,777,471	$ 338,874	$ 342,810	$ 681,684
Understated Gross Revenue	1,162,083	58,104	9,755	67,859
Inappropriate Revenue Exclusions	2,180,724	109,036	44,955	153,991
Fee on Late Payments			11,337	11,337
Sub-Total	**$ 10,120,278**	**$ 506,014**	**$ 408,457**	**$ 914,871**
*** Payment on audit assessment**		$ (58,104)		$ (58,104)
Total	**$ 10,120,278**	**$ 447,910**	**$ 408,857**	**$ 856,767**

* As a result of the revenue reporting error identified during the course of our audit, TW Telecom paid the audit assessment of $58,104 in additional fees due the City before the audit was completed. Therefore, for this particular finding, TW Telecom has to remit only $9,755 in late fees.

These matters are discussed in detail in the following sections of this report.

Failed To Report $6,777,471
In Franchise Fees Collected from Its Customers

TW Telecom inappropriately excluded $6,777,471 in additional revenue it generated by charging a five percent franchise fee to its customers. According to §7.1 of the telecommunications franchise agreement, TW Telecom is required to pay the City the greater of $200,000 or five percent of its gross revenue. As defined by §1.16 of the franchise agreement, "Gross Revenue shall include all revenue, as determined by generally accepted accounting principles, that is received directly or indirectly by the Company or any Affiliated Person from or in connection with any Telecommunication Services provided in accordance with this Agreement." However, TW Telecom did not adhere to the gross revenue terms of the agreement. Our review found that for calendar years 2003 through 2007, TW Telecom did not report to the City $6,777,471 in revenue received from a five percent franchise fee it charged its customers. According to TW Telecom officials, the franchise fee is a tax and therefore should not be reported to the City as revenue. However, TW Telecom's opinion is not supported by the provisions of the franchise agreement or the New York State Public Service Commission. Consequently, TW Telecom understated its revenue by $6,777,471 and, as a result, it owes the City $681,684 in additional franchise fees and late charges as detailed in Appendix I.

> ***TW Telecom Response:*** TW Telecom officials argued that the "compensation paid under the Franchise Agreement does constitute a tax and should be excluded from gross revenue." They further stated that "the definition of gross revenue to be included in the payment of franchise fees specifically excludes taxes."

> ***Auditor Comments:*** As stated in this report, TW Telecom's position—that the franchise fees it pays the City under its agreement is a tax—is not supported by the franchise agreement with the City or the New York State Public Service Commission guidelines. In addition, contrary to TW Telecom's argument, the definition of gross revenue in section 1.16 of the agreement clearly and unambiguously limits exclusion to taxes paid to legitimate taxing authorities. A franchise fee paid under a contractual agreement with the City is not a tax and is therefore not applicable in this case. According to the agreement, "Gross Revenue shall include all revenue, as determined by generally accepted accounting principles that is received directly or indirectly by the Company or any Affiliated Person from or in connection with any Telecommunication Services provided in accordance with this Agreement." By arbitrarily classifying the franchise fees as a tax, TW Telecom is inappropriately understating its gross revenue amounts reported to the City. Consequently, TW Telecom is taking a significant departure from the revenue terms of its agreement with the City.

Understated $1,162,083 in
Gross Revenue Reported to the City

TW Telecom erroneously omitted a total of $1,162,083 from its franchise fee calculation report submitted to the City for calendar year 2007. Our review of the franchise fee calculation reports submitted to the City found that TW Telecom failed to include all its revenue for the third and fourth quarters of calendar year 2007. Specifically, in its franchise fee calculation reports, TW Telecom reported total gross revenue in the amount of $7,083,461 and paid $354,173 in franchise fees in error. However, after we discussed the revenue omission with TW Telecom officials, they revised the franchise fee calculation report to reflect a new total of $8,245,544. This recalculation resulted in additional revenue reported to the City in the amount of $1,162,083 and a corresponding franchise fee payment of $58,104. It should also be noted that TW Telecom paid the $58,104 due before the audit was completed. As a result, TW Telecom must remit only $9,755 in late fees, as detailed in Appendix II.

> ***TW Telecom Response:*** "In providing documentation for this audit, we identified an error in the calculation of 3rd and 4th 2007 fees and proactively and immediately paid back the necessary balance resulting from this calculation error. We have ensured that all subsequent payments have been calculated correctly going forward."

> ***Auditor Comments:*** We are glad that TW Telecom acknowledged and corrected the error the auditors identified.

<u>Inappropriately Excluded $2,180,724</u>
<u>From Its Gross Revenue Report</u>

Our review of TW Telecom's franchise fee calculation found that for calendar years 2006 and 2007, TW Telecom excluded a total of $2,180,724 from the gross revenue amount it reported to the City. According to TW Telecom officials, the excluded amount represents revenue generated from outside the City. According to the agreement, when TW Telecom receives revenue from any affiliated or other person who has provided services using any part of the system, the amount received should be proportionately allocated and included in the gross revenue reported to the City. The agreement also requires that TW Telecom submit to the City for the City's review and approval the method by which such allocations are to be made. However, we were not able to determine the basis for the revenue exclusion and whether, if applicable, TW Telecom used the proper methodology to exclude the amount from the gross revenue it reported to the City. As a result, TW Telecom should report $2,180,724 and pay $153,991 in additional franchise fees and late charges to the City, as detailed in Appendix III.

> ***TW Telecom Response:*** "The exclusion in question is for revenues from two newest products that do not originate, terminate, nor transit the City, but have been recorded to the New York Business Unit (BU). We developed these products with section 1.16 in mind, whereby the product structure and the two main billing elements create a natural allocation of revenue from the system."

> ***Auditor Comments:*** As stated in section 1.16 of the agreement, any revenue received by the company or by any affiliated person for services using any part of the system should be proportionally allocated. Also, according to the agreement, such allocation method should be submitted in advance to the City for approval. Since TW Telecom did not inform the City of such new products or the allocation of new revenue, the exclusion is clearly not allowed under the agreement.

Did Not Submit Timely Payments to the City

Our review of the quarterly franchise fee report that TW Telecom submitted to DoITT, for calendar years 2006 and 2007 found that TW Telecom made late payments for the first and third quarters of 2007. TW Telecom submitted these payments 84 and 34 days, respectively, after the established due date. According to §7.1 of the agreement, payments must be made no later than 45 days after the last day of March, June, September, and December. §7.4 of the agreement also states that "in the event that any payment required by this agreement is not actually received by the City on or before the date fixed in this agreement, interest thereon shall accrue from such date until received at a rate equal to the rate of interest then in effect charged by the City for late payments of real estate taxes." TW Telecom did not submit its payments on time. Therefore, it owes the City $11,337 in late charges, as detailed in Appendix IV.

> ***TW Telecom Response:*** "We concede these late payments and strive for a consistent and timely payment in accordance with the contract going forward."

Other Issues

Taxes and Surcharges Collected from Customers

In its customers' bills, TW Telecom assessed several categories of federal, state, and local taxes, as well as surcharges. Although this audit did not cover the taxes and surcharges assessed, our review of the guidelines of the New York State Public Service Commission and the provisions of New York State local telecommunications taxes and fees could not determine whether all the taxes and surcharges TW Telecom listed in its customers' bills were appropriately mandated—or actually remitted to the proper state and local authorities.

DoITT Does Not Provide Proper Oversight

DoITT did not properly monitor TW Telecom's performance to ensure that all revenue was reported to the City in accordance with the agreement. Our review of the franchise fee calculation reports submitted to DoITT found that DoITT accepted TW Telecom's payments even when the financial data reported was inaccurate and incomplete. As discussed in this report, TW Telecom did not report additional revenue it generated by charging a five percent franchise fee to its customers, did not include all its revenue in the franchise fee calculation reports for the third and fourth quarters of calendar year 2007, inappropriately excluded revenue from its franchise fee calculation reports submitted to the City for calendar years 2006 through 2007, and submitted late payments to the City. However, despite these deficiencies, our review indicated that DoITT did not conduct adequate oversight to ensure that the correct revenue amounts and corresponding franchise fees were submitted to the City.

The City Charter provides that every agreement memorializing the terms and conditions of a franchise, revocable consent, or concession should contain adequate provisions to secure efficiency of the services provided, assure the maintenance of the property of the City, and provide for adequate compensation to the City. The City Charter also requires that the agency designated to have primary expertise and responsibility for the franchise should monitor the performance of the grantee and enforce the terms and conditions of the franchise under its jurisdiction.

In addition, §8.7 of the agreement requires DoITT to exercise certain oversight responsibilities with respect to monitoring compliance with financial report submissions and the maintenance of adequate books and records. DoITT failed to exercise its oversight responsibilities to ensure that the revenue and corresponding franchise fee calculations TW Telecom reported were accurate and in compliance with the agreement. As a result, DoITT did not detect nor address TW Telecom's failure to report all its revenue and pay the correct franchise fees and late charges due the City under §7 of the franchise agreement.

Based on the conclusion stated above, we recommend that DoITT actively monitor TW Telecom's compliance with the agreement by ensuring that all financial reports are properly submitted and reviewed, and that detailed and accurate books and records in support of all revenue activities are maintained as required by the agreement.

> ***DoITT Response:*** In their response, DoITT officials stated, "I assure you that DoITT takes the reporting requirements and any outstanding payments of the franchises it oversees very seriously, and has carefully reviewed the findings contained in the audit report with the objective of further strengthening these controls and procedures."

RECOMMENDATIONS

We recommend that TW Telecom:

1. Pay the City $856,767 in additional franchise fees and late charges.

   TW Telecom Response: "As summarized in Table I above, we disagree with $455,062 of the recommended assessments which is the difference between $856,767 recommended by the City, and the $401,705 calculated by tw telecom. Additionally, the amount calculated by tw telecom includes $380,613 which we have argued also should be removed as an assessment. Any implementation plan would need to begin by resolving this discrepancy."

2. Report to the City all revenue generated from franchise fees charged to customers.

   TW Telecom Response: "Beginning with our 1Q09 quarterly payments, we have begun to call out separately the amounts generated from franchise fees charged to our customers.

3. Submit the calculations of franchise fees in sufficient detail to the City.

   TW Telecom Response: "As mentioned above, each quarter we provide a Franchise Fee calculation sheet which we believe is in sufficient detail to support our gross revenue calculation. We will work with DoITT to enhance this report going forward as necessary."

We recommend that DoITT:

4. Ensure that TW Telecom pays the $856,767 in additional franchise fees and late charges recommended in this report and complies with the report's other recommendations.

   DoITT Response: "DoITT will pursue payment of the full balance owed to the City. DoITT also plans to seek in future franchise negotiations franchise terms that would better clarify issues related to calculation of franchise fees and would reduce the likelihood of further disputes with regard to such matters going forward."

5. Ensure that franchise fee calculations and other financial reports are properly submitted and reviewed in a timely manner, and establish proper guidelines to monitor TW Telecom's compliance with its City agreement.

   DoITT Response: "DoITT will continue to work aggressively to obtain the required reports and other data needed to substantiate franchise revenue owed to the City. Franchise fees must now be remitted directly to DoITT in order for the appropriate staff to monitor all payments and to ensure compliance with the revenue provisions of all franchise agreements. Late fee assessments will continue to be sent out in a timely manner and all late payments are now mandated to be paid directly to DOITT. Additionally, DoITT required that Franchise Commission Reports comprised of a breakdown of all revenues, be submitted by franchisees to DOITT in order for appropriate staff to carefully review revenue and fees."

TW Telecom, Inc.
Schedule of Late Fees Due on Unreported Franchise Fee Revenue
January 1, 2003, through December 31, 2007

Date	Additional 5% Fees Due City	Accumulated Balance Due	Payment Due Date	Cover Period		Number of Days Overdue	(a) Interest Rate	(b) Late Interest Charge
				From	To			
2003								
1st Quarter	$ 22,732	22,732	5/15/2003	5/16/2003	8/14/2003	91	18.00%	$ 1,043
		23,775						
2nd Quarter	17,176	40,951	8/14/2003	8/15/2003	11/14/2003	92	18.00%	1,900
		42,851						
3rd Quarter	15,345	58,196	11/14/2003	11/15/2003	2/14/2004	92	18.00%	2,700
		60,897						
4th Quarter	13,565	74,462	2/14/2004	2/15/2004	5/15/2004	91	18.00%	3,417
2004		77,879						
1st Quarter	17,925	95,804	5/15/2004	5/16/2004	8/14/2004	91	18.00%	4,396
		100,200						
2nd Quarter	14,935	115,135	8/14/2004	8/15/2004	11/14/2004	92	18.00%	5,343
		120,478						
3rd Quarter	14,947	135,425	11/14/2004	11/15/2004	2/14/2005	92	18.00%	6,284
		141,709						
4th Quarter	13,644	155,353	2/14/2005	2/15/2005	5/15/2005	90	18.00%	7,049
2005		162,401						
1st Quarter	14,546	176,947	5/15/2005	5/16/2005	8/14/2005	91	18.00%	8,120
		185,067						
2nd Quarter	11,039	196,106	8/14/2005	8/15/2005	11/14/2005	92	18.00%	9,100
		205,206						
3rd Quarter	10,529	215,735	11/14/2005	11/15/2005	2/14/2006	92	18.00%	10,011
		225,746						
4th Quarter	9,704	235,450	2/14/2006	2/15/2006	5/15/2006	90	18.00%	10,683
2006		246,132						
1st Quarter	11,377	257,509	5/15/2006	5/16/2006	8/14/2006	91	18.00%	11,816
		269,326						
2nd Quarter	9,693	279,019	8/14/2006	8/15/2006	11/14/2006	92	18.00%	12,947
		291,966						
3rd Quarter	9,750	301,716	11/14/2006	11/15/2006	2/14/2007	92	18.00%	14,001
		315,717						
4th Quarter	10,038	325,755	2/14/2007	2/15/2007	5/15/2007	90	18.00%	14,780
2007		340,535						
1st Quarter	9,624	350,159	5/15/2007	5/16/2007	8/14/2007	91	18.00%	16,068
		366,227						
2nd Quarter	9,574	375,801	8/14/2007	8/15/2007	11/14/2007	92	18.00%	17,438
		393,239						
3rd Quarter	9,459	402,698	11/14/2007	11/15/2007	2/14/2008	92	18.00%	18,686
		421,384						
4th Quarter	8,249	429,633	2/14/2008	2/15/2008	4/30/2009	441	18.00%	104,346
Sub Total	**$ 253,851**							**$ 280,129**

TW Telecom, Inc.
Schedule of Late Fees Due on Unreported Franchise Fee Revenue
January 1, 2003, through December 31, 2007

Date	Additional 5% Fees Due City	Accumulated Balance Due	Payment Due Date	Cover Period From	Cover Period To	Number of Days Overdue	(a) Interest Rate	(b) Late Interest Charge
2005								
4th Quarter	$ 72,154	72,154	2/14/2006	2/15/2006	5/15/2006	90	18.00%	$ 3,274
2006		75,428						
1st Quarter	1,260	76,688	5/15/2006	5/16/2006	8/14/2006	91	18.00%	3,519
		80,207						
2nd Quarter	564	80,771	8/14/2006	8/15/2006	11/14/2006	92	18.00%	3,748
		84,519						
3rd Quarter	2,050	86,569	11/14/2006	11/15/2006	2/14/2007	92	18.00%	4,017
		90,586						
4th Quarter	1,419	92,005	2/14/2007	2/15/2007	5/15/2007	90	18.00%	4,174
2007		96,179						
1st Quarter	1,690	97,869	5/15/2007	5/16/2007	8/14/2007	91	18.00%	4,491
		102,360						
2nd Quarter	12,565	114,925	8/14/2007	8/15/2007	11/14/2007	92	18.00%	5,333
		120,258						
3rd Quarter	(6,863)	113,395	11/14/2007	11/15/2007	2/14/2008	92	18.00%	5,262
		118,657						
4th Quarter	184	118,841	2/14/2008	2/15/2008	4/30/2009	441	18.00%	28,863
Sub Total	**$ 85,023**							**$ 62,681**
Sub Total	**$ 253,851**							**$ 280,129**
Total	**$ 338,874**							**$ 342,810**

(a) Section 7.4 of the Franchise agreement requires that "in the event that any payment required by this Agreement is not actually received by the City on or before the applicable dated fixed in this Agreement, interest thereon shall accrue from such date until received at a rate equal to rate of interest then in effect charged by the City for late payments of real estate taxes. Based on the Department of Finance's guidelines on "Interest Rates for Late Payment of Property Tax," the applicable rate is 18%.

(b) Late interest charges were calculated through April 30, 2009.

TW Telecom, Inc.
Schedule of Late Fees Due on Understated Revenue
July 1, 2007, through December 31, 2007

Date	Additional 5% Fees Due City	Accumulated Balance Due	Payment Due Date	Cover Period From	Cover Period To	Number of Days Overdue	(a) Interest Rate	(b) Late Interest Charge
2007								
3rd Quarter	$ 17,893	17,893	11/14/2007	11/15/2007	2/14/2008	92	18.00%	$ 830
		18,723						
4th Quarter	40,211	58,934	2/14/2008	2/15/2008	11/26/2008	286	18.00%	8,925
Total	$ 58,104							$ 9,755

(a) Section 7.4 of the Franchise agreement requires that "in the event that any payment required by this Agreement is not actually received by the City on or before the applicable dated fixed in this Agreement, interest thereon shall accrue from such date until received at a rate equal to rate of interest then in effect charged by the City for late payments of real estate taxes. Based on the Department of Finance's guidelines on "Interest Rates for Late Payment of Property Tax," the applicable rate is 18%.

(b) Late interest charges were calculated through the date payment was made, November 26, 2008.

TW Telecom, Inc.
Schedule of Late Fees Due on Improper Revenue Exclusion
January 1, 2006, through December 31, 2007

Date	Additional 5% Fees Due City	Accumulated Balance Due	Payment Due Date	Cover Period From	Cover Period To	Number of Days Overdue	(a) Interest Rate	(b) Late Interest Charge
2006								
1st Quarter	$ 8,753	8,753	5/15/2006	5/16/2006	8/14/2006	91	18.00%	$ 402
		9,155						
2nd Quarter	8,630	17,785	8/14/2006	8/15/2006	11/14/2006	92	18.00%	825
		18,610						
3rd Quarter	9,862	28,472	11/14/2006	11/15/2006	2/14/2007	92	18.00%	1,321
		29,793						
4th Quarter	11,219	41,012	2/14/2007	2/15/2007	5/15/2007	90	18.00%	1,861
2007		42,873						
1st Quarter	11,965	54,838	5/15/2007	5/16/2007	8/14/2007	91	18.00%	2,516
		57,354						
2nd Quarter	15,363	72,717	8/14/2007	8/15/2007	11/14/2007	92	18.00%	3,374
		76,092						
3rd Quarter	22,252	98,344	11/14/2007	11/15/2007	2/14/2008	92	18.00%	4,563
		102,907						
4th Quarter	20,992	123,899	2/14/2008	2/15/2008	4/30/2009	441	18.00%	30,092
Total	**$ 109,036**							**$ 44,955**

(a) Section 7.4 of the Franchise agreement requires that "in the event that any payment required by this Agreement is not actually received by the City on or before the applicable dated fixed in this Agreement, interest thereon shall accrue from such date until received at a rate equal to rate of interest then in effect charged by the City for late payments of real estate taxes. Based on the Department of Finance's guidelines on "Interest Rates for Late Payment of Property Tax," the applicable rate is 18%.

(b) Late interest charges were calculated through April 30, 2009.

TW Telecom, Inc.
Schedule of Late Fees Due on Payments Submitted Late
January 1, 2007, through December 31, 2007

Date	Additional 5% Fees Due City	Accumulated Balance Due	Payment Due Date	Cover Period From	Cover Period To	Number of Days Overdue	(a) Interest Rate	(b) Late Interest Charge
2007								
1st Quarter	$ 192,482	192,482	5/15/2007	5/16/2007	8/7/2007	84	18.00%	$ 8,139
3rd Quarter	189,184	189,184	11/14/2007	11/15/2007	12/18/2007	34	18.00%	3,198
Total								$ 11,337

(a) Section 7.4 of the Franchise agreement requires that "in the event that any payment required by this Agreement is not actually received by the City on or before the applicable dated fixed in this Agreement, interest thereon shall accrue from such date until received at a rate equal to rate of interest then in effect charged by the City for late payments of real estate taxes. Based on the Department of Finance's guidelines on "Interest Rates for Late Payment of Property Tax," the applicable rate is 18%.

(b) Late interest charges were calculated through the date payment was made, August 7, 2007 and December 18, 2007, respectively.

May 18, 2009

Mr. John Graham
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007-2341

RE: Audit Report on the Compliance of tw telecom
With Its City Franchise Agreement
January 1, 2006 – December 31, 2007
FN09-064A

Dear Mr. Graham:

This letter is in response to the draft report of the above captioned audit as well as to respectfully request that you reconsider assessments made with respect to the audit as we believe certain conclusions to be incorrect, as well as to request an abatement of the late fees that been calculated from these assessments.

I have created a table which presents what we believe to be corrected assessments based on the issues discussed during the audit. I will then address each issue individually.

Modified Fees and Interest Owed
Based on Unreported Revenue

Revenue Categories	PER CITY OF NEW YORK Underreported Revenue	Franchise Fees Due	Late Fees Assessed	Total Due the City
Franchise Fee Revenue not reported to the City	$ 6,777,471	$ 338,874	$ 342,810	$ 681,684
Understated Gross Revenue	1,162,083	58,104	9,755	67,859
Inappropriate Revenue Exclusions	2,180,724	109,036	44,955	153,991
Fee on Late Payments			11,337	11,337
subtotal	$ 10,120,278	$ 506,014	$ 408,857	$ 914,871
Payment on Audit Assessment		$ (58,104)		$ (58,104)
Total	$ 10,120,278	$ 447,910	$ 408,857	$ 856,767

Revenue Categories	MODIFIED PER tw telecom Underreported Revenue	Franchise Fees Due	Late Fees Estimate	Total Due the City
Franchise Fee Revenue not reported to the City	$ 3,811,097	$ 190,555	$ 190,058	$ 380,613
Understated Gross Revenue	1,162,083	58,104	9,755	67,859
Inappropriate Revenue Exclusions	-	-	-	-
Fee on Late Payments			11,337	11,337
subtotal	$ 4,973,180	$ 248,659	$ 211,150	$ 459,809
Payment on Audit Assessment		$ (58,104)		$ (58,104)
Total	$ 4,973,180	$ 190,555	$ 211,150	$ 401,705

ISSUE #1 – Franchise Fee Revenue Not Reported to the City

According to section 1.16 of the Agreement, the definition of "Gross Revenue" shall not include taxes collected to pay to legitimate taxing authorities. The definition of gross revenues to be included in the payment of franchise fees specifically excludes taxes.

We believe compensation paid under our Franchise Agreement does constitute a tax and should be excluded from gross revenue. Our arguments supporting this exclusion are that the compensation is based on gross revenue, similar to a gross receipts tax, and therefore, as is the case with all taxes, is not in proportion to the amount of benefit being gained from the use. There is case law to support our view that this compensation is a tax and should be treated as such. For example, in Teleprompter Corporation vs. the City of New York, (July 16, 1981), the court stated:

> "Preliminarily we agree with Teleprompter that the compensation provided in the franchise agreement is in the nature of "a tax" as that term is used in RPTL §626, notwithstanding the fact that section 7(h) of the franchise contract states that the compensation was not to be so considered."

According to the Audit Report, our opinion is "not supported by the provisions of the franchise agreement or the New York State Public Service Commission". Based on examples of case law such as that presented above, we believe our opinion is sound. . We still believe that our passthrough of this fee is in fact a tax and our exclusion has been appropriate and supportable.

Notwithstanding these arguments, although the audit report states that the "review found that for calendar years 2003 through 2007, tw telecom did not report to the City $6,777,471 in revenue received from a five percent franchise fee it charged its customers", the assessment made by City was actually estimated using two pieces of information; 1) summing all payments made by tw telecom to the City from 2003 forward, when we began passing through the fee to customers, and multiplying these payments by 5%, and 2) taking a $1.4M balance in an Accrued Franchise Fee liabilities as of 12/2005 and multiplying this balance by 5%. The result of using these estimates is an error in the assessment. I will address each estimate individually below.

1) The amount of fees passed through to our customers is less than the estimate due primarily to customers being contractually exempt from these fees. After we received your preliminary draft report, we sent the auditors actual amounts passed through to customers which is also summarized below and totals $3,811,097. These amounts can be verified by reviewing our billing records.

2002 12/15/02 invoice	2003	2004	2005	2006	2007
47,656	715,019	863,820	750,305	698,944	735,354

Applying the 5% fee equals a modified assessment of $190,555.

2) tw telecom is required by the Agreement to keep accurate books and records, which we strive to do. In our opening conference with the City, we mentioned that we work diligently to keep accurate books and records at a Business Unit (BU) or city level, but that the Balance Sheet in particular at a city level may be suspect. This is true with the liability that was reflected in account 231000, Accrued Franchise Fees. As could be seen by the Auditors, this liability had billing and payment activity flowing through it each month, but the overall balance did not materially change throughout 2006 and 2007. This is because the $1.4M liability balance is not specifically related to the City. After the audit period ending 2007, this error had been corrected and the liability significantly reduced. The current balance of that account as of 1/2009 is $304K, reflecting simply the timing of Franchise Fee payments to the City. This portion of the assessment should be removed.

In summary, although we question the inclusion of Franchise Fees in the calculation of gross revenue, we believe that the assessment should be reduced to $190,555.

ISSUE #2 – Understated Gross Revenue

In providing documentation for this audit, we identified an error in the calculation of 3rd and 4th 2007 fees and proactively and immediately paid back the necessary balance resulting from this calculation error. The cause of this error stems from the system and process changes tw telecom made in our revenue accounting processes that we discussed with the Auditors in the opening conference. These process changes also created changes in the support used to calculate gross revenue and as a result, the calculation for these two quarters was originally performed incorrectly. We have ensured that all subsequent payments have been calculated correctly going forward.

ISSUE #3 – Inappropriate Revenue Exclusions

According to section 1.16 of the Agreement, "Gross Revenue" shall include all revenue, "which originate in and/or terminate in or transit the City, which shall include a proportional allocation, which allocation shall be fair and equitable, of revenues received by, or that should have been received by, the Company, any Affiliated Person or any other Person for Service utilizing any part of the System". The exclusion in question is for revenues from two newer products, that do not originate, terminate, nor transit the City, but have been recorded to the New York Business Unit (BU). We developed these products with this section 1.16 in mind, whereby the product structure and the two main billing elements create a "natural" allocation of the revenue from the system. The port element is for the physical connectivity of a service location, and the virtual or extended LAN element is the charge for connectivity between locations. The City receives 100% of these elements for locations in the City as per the Agreement. A more detailed description of these products with examples of this natural allocation follows.

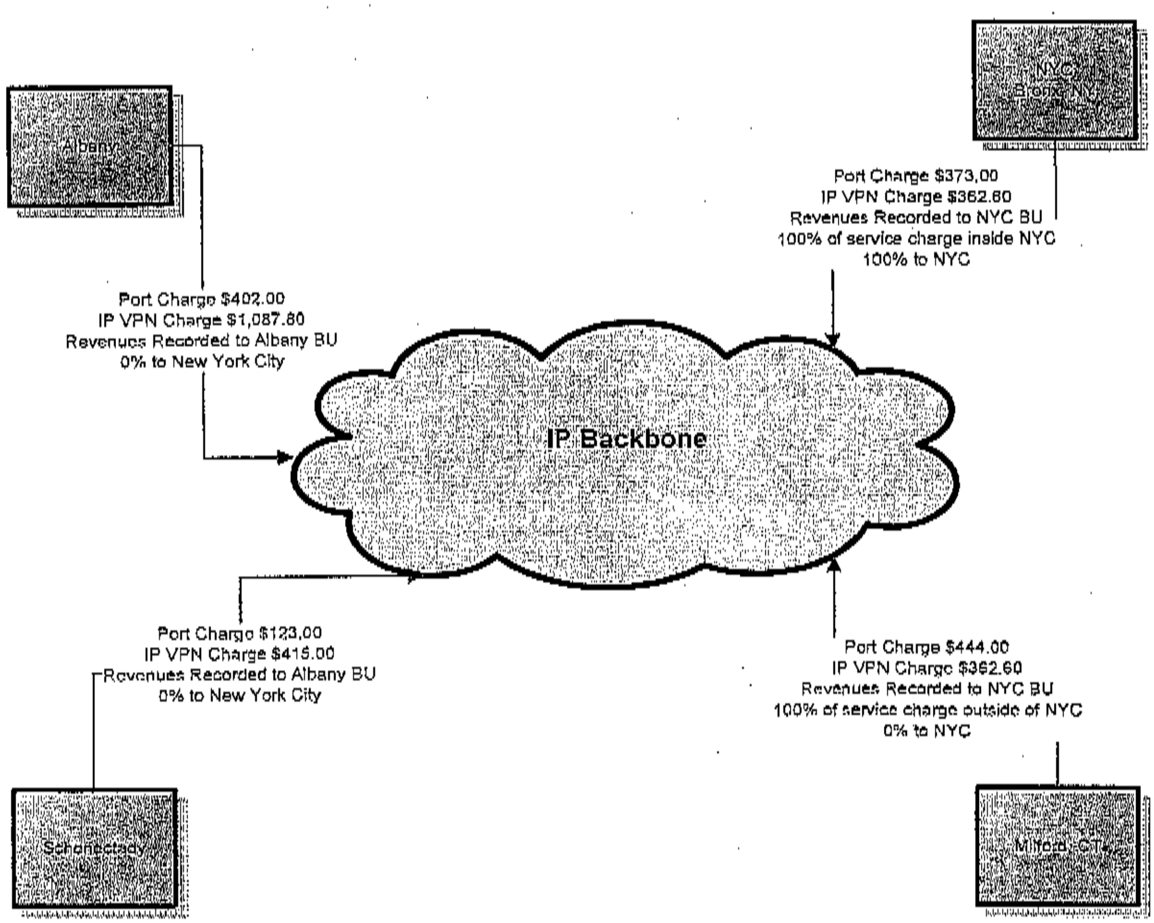
Over the last few years we have introduced two new service offerings, our Native LAN product (NLAN) and our Internet Protocol based Virtual Private Network product (IP VPN). These products offer connectivity for a customer's multiple locations in order to create a virtual private network for the data, internet and voice transfer between locations. Many times one or more of the customer's locations is off of our network and so we must purchase this location's connection from another provider, and/or are located outside one of our 75 Business Units. In these cases, we will select a Business Unit closest to the customer location to record the associated revenues and off-net expenses we pay to provide service to this location.

The product examples and revenue amounts presented below are from the 12/2007 information that we have shared and discussed with the Auditors where we excluded $142,532.80 from gross revenue.

The first example is a typical IP VPN solution with multiple customer sites connected together through our internet backbone. Two sites, Albany and Schenectady generate revenues recorded to the company's Albany Business Unit (BU) and are thus not included in the City's books and records. The other two sites, Bronx, NY and Milford, CT generate revenues that are recorded to the NYC BU and were included in the data provided as part of the audit. As mentioned above, each site generates two product elements or charges which we bill our customer, a port charge and an IP VPN charge.

The port charge is the local loop connectivity from the customer location to our internet backbone, and the IP VPN charge is connectivity between locations. The connectivity from both elements is completely within the location presented below, either the City or Milford, CT. In the case of Milford, because tw telecom does not own network in that location, we purchase services from another provider to complete the customer's network in that location. The port charge and IP VPN charge in the City would be includable, and was included, in the gross revenue calculation, the charges in Milford, CT would not be includable again because the entire connectivity is within Milford, CT.

IPVPN Example customer 298099

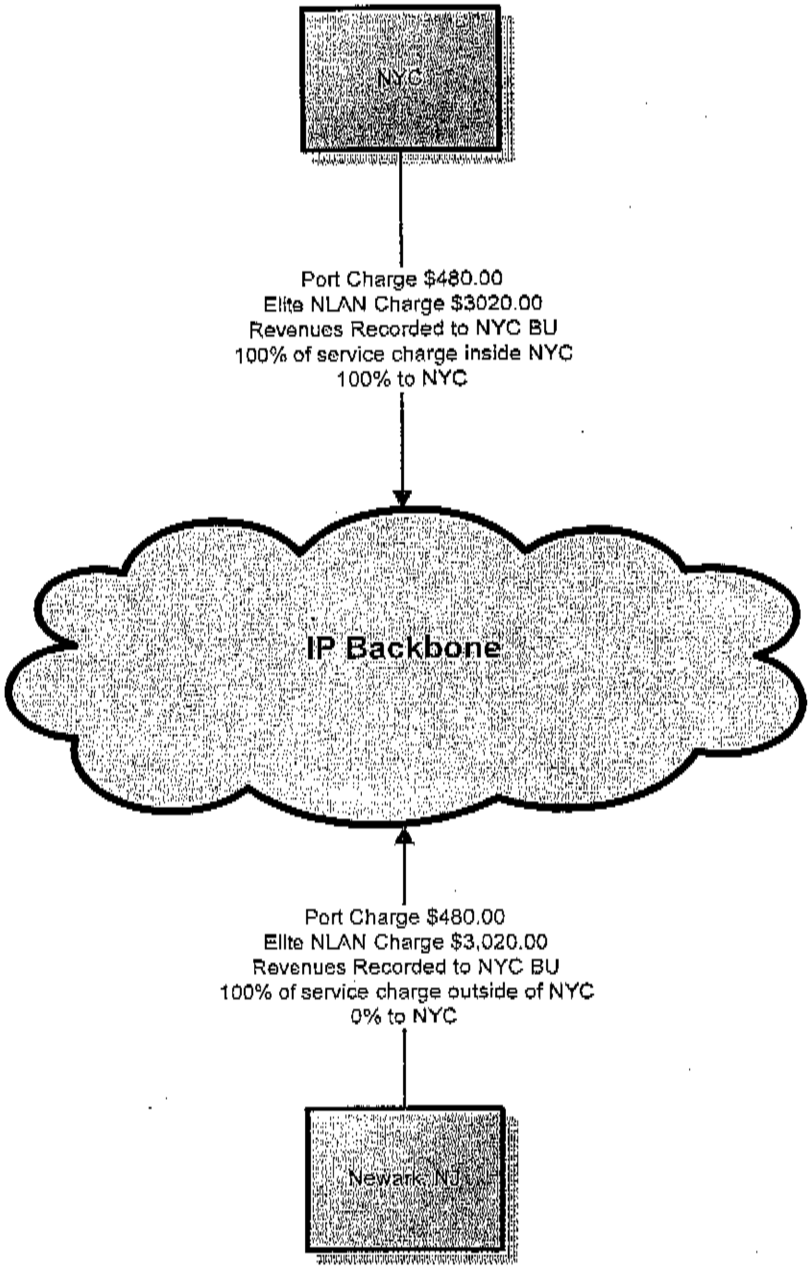


In summary, for this solution, the City would, and did, receive a natural allocation of $735.60 ($373.00 port charge and $362.60 IP VPN charge) of gross revenue. Revenues for the Milford, CT, Albany, and Schenectady locations did not originate, terminate, nor transit the city of New York and thus should not be included in the City's revenue.

The second example, which is very similar to IP VPN, is a typical Native LAN solution (NLAN) solution where there are multiple customer sites connected together through our internet backbone. In this example, the two sites, NYC, NY and Newark, NJ generate revenues that are recorded to the NYC BU. Each site generates two charges which we bill our customer, a port charge and a Native LAN charge.

As with IP VPN, the port charge is the local loop connectivity from the customer location to our internet backbone, and the Native LAN charge is connectivity between locations. The connectivity from both elements is completely within the location presented below, either the City or Newark, NJ. The port charge and Native LAN charge in the City would be includable, and was included, in the gross revenue calculation, the charges in Newark would not be includable.

Native LAN (NLAN) solution account 251878



In summary, for this solution, the City would, and did, receive a natural allocation of $3,500.00 ($480.00 port charge and $3,020.00 Native LAN charge) of gross revenue.

Revenues for the Newark, NJ location did not originate, terminate, nor transit the city of New York and thus should not be included in the City's revenue.

Again, in accordance with Section 1.16 of the Agreement, the product structure creates a natural allocation of the system and allows for all locations within the City to contribute 100% on the local loop connectivity, the port charge, and 100% of the product element, either the IP VPN or the NLAN charge, that provides connectivity between all customer locations. Revenues booked to the NYC BU but are outside of the City are excluded appropriately and the exclusion is consistent with both the written definition and the underlying principle on the franchise agreement. For both solutions then, there is no revenue that should be included and thus this assessment should be removed.

ISSUE #4 – Fees on Late Payments
We concede these late payments and will strive for a consistent and timely payment in accordance with the contract going forward.

Request for abatement on Late Fees
Section 7.4 of the Agreement states that in the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date until received at a rate equal to the rate of interest then in effect charged by the City for late payments of real estate taxes.

Although we understand the Agreement is not bound by NYC tax provisions, we believe they provide relevant guidance to consider in the assessment of interest. Pursuant to NYC tax provisions, penalties and interest for late filings can be abated if it is shown that such failure was due to reasonable cause and not due to willful neglect. Further, NY state guidelines suggest that reasonable cause exists only where the taxpayer has acted in good faith. Relevant grounds indicating reasonable cause include, an honest misunderstanding of fact or law and computational or transcriptional errors.

As shown above, the company has at all times acted in good faith by, as in issue #1 excluding revenues where there is an honest misunderstanding of fact or law, or as in issue #3 where we proactively identified a calculation error and immediately paid back a necessary balance.

In addition, included with each quarterly payment tw telecom has provided a Franchise Fee calculation sheet which presents revenues that we have included as gross revenue and excluded as gross revenue in calculation of each quarterly payment. Since the city has been aware of these exclusions each quarter, interest could have been avoided through timely discussions. To now go back to 2003 and assess late fees is in our belief an unreasonable and onerous penalty.

We have noted that other telecommunication companies have negotiated in their franchise agreements, the ability to reduce gross revenues by amounts paid to independent third party owners of facilities purchased as necessary to provide resale services to customers. The company purchases similar services to complete solutions for our customers in locations where we do not own network, examples of which are described in the IP VPN and Native LAN discussion above. These purchases can and do include locations inside the City. Although this language is not included in the tw telecom franchise agreement, we believe it is an important factor to consider in weighing the assessments above.

For these reasons above, the Company respectfully requests an abatement of the interest assessments made.

Agency Implementation Plan (AIP)

Recommendation #1 – Pay the City $856,767 in additional franchise fees and late charges. As summarized in Table 1 above, we disagree with $455,062 of the recommended assessments which is the difference between $856,767 recommended by the City, and the $401,705 calculated by tw telecom. Additionally, the amount calculated by tw telecom includes $380,613 which we have argued also should be removed as an assessment. Any implementation plan would need to begin by resolving this discrepancy.

Recommendation #2 – Report to the City all revenue generated from franchise fees charged to customers. Beginning with our 1Q09 quarterly payments, we have begun to call out separately the amounts generated from franchise fees charged to our customers.

Recommendation #3 – Submit the calculations of franchise fees in sufficient detail to the City. As mentioned above, each quarter we provide a Franchise Fee calculation sheet which we believe is in sufficient detail to support our gross revenue calculation. We will work with DoITT to enhance this report going forward as necessary.

Thank you in advance for your consideration with this matter. If you have any questions please call me at (303) 566-1290.

Sincerely,

John Hill
Controller – Financial Management
tw telecom

cc: Rochelle Jones
Leslie White

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS
Paul J. Cosgrave, Commissioner
Mitchel Ahlbaum, Deputy Commissioner and General Counsel

May 22, 2009

Mr. John Graham
Deputy Comptroller
The City of New York Office of the Comptroller
Audits, Accounts and Contracts
1 Centre Street, 5th Floor South
New York, N.Y.

Re: Audit Report on the Compliance of TW Telecom
With Its City Franchise Agreement
January 1, 2006-December 31, 2007
FN09-064A

Dear Deputy Comptroller Graham:

I am writing in response to the above-captioned draft audit report ("draft report") dated May 8, 2009.

First, on behalf of the Department on Information Technology and Telecommunications ("DoITT"), I would like to recognize the diligent efforts by your audit staff during the course of the audit. Based on the examination, the auditors determined that, from calendar years 2003-2007, TW Telecom's "unpaid fees" due to the City of New York ("City") were $447,910 (plus late charges of $408,857). DoITT has reviewed the underpayment and late charges identified in the draft report, and will seek TW Telecom's compliance with these financial determinations.

Before responding to the audit findings and recommendations, I would like to comment briefly on the section of the draft report that discusses DoITT's oversight activities. In pertinent part, this section states that "...our review indicated that DoITT did not conduct adequate oversight to ensure that the correct revenue amounts and corresponding fees were submitted to the City" and that "DoITT failed to exercise its oversight responsibilities to ensure that the revenue and corresponding franchise fee calculations TW Telecom reported were accurate and in compliance with the agreement."

Over the five calendar year, 2003-2007, period in which the draft report identified $447,910 in "unpaid fees" by TW Telecom to the City, I would note that DoITT collected well over $500 million in franchise fees, on nearly $9 billion in franchise revenues reported to, and verified by, the agency. Indeed, although the draft report suggests, in its title and elsewhere, that the audit covered a two calendar year, 2006-2007, period, a substantial amount of the unpaid fees and associated late charges are attributable to the "expanded" 2003-2005 audit period. DoITT therefore requests, without diminishing the significance of the unreported revenue identified in the audit, that this section of the report be amended to note that DoITT successfully collected well over 99% of the franchise revenues due to the agency during the five-year period.

A significant portion of the underpayment identified by the audit arises from TW Telecom's position that payments by customers of amounts separately identified on customer bills as attributable to franchise fee payments are excluded from the revenue that is subject, under the franchise agreement, to a 5% franchise payment to the City. DoITT concurs with the legal underpinning of the audit's findings. TW Telecom has expressed the position that such amounts thus indentified on customer bills represent "taxes collected to pay legitimate taxing authorities," as that phrase is used in the description, in Section 1.16 of the franchise agreement, of receipts that are not to be included in the "Gross Revenue" subject, under Section 7.1.1 of the franchise agreement, to a percentage of Gross Revenue franchise payment to the City. In support of its position that amounts collected that were identified on customer bills as attributable to franchise fees are "taxes," TW Telecom has cited *Teleprompter v. City of New York* 441 NYS2d 239 (1st Dept., 1981). However the Appellate Division's finding relevant to this issue in that case represents dicta by an intermediate level state court based on little analysis or discussion.

A more accurate description of the prevailing law in New York on whether franchise fees are properly characterized as "taxes" or, to the contrary, contractual obligations analogous to rent, is found in a fully analyzed holding by New York State's highest court, the New York State Court of Appeals, in *City of New York v. Long Island Railroad Company* 44 NY2d 827 (1978). In that case, the Court of Appeal made clear that franchise agreement payments for occupancy and use of city streets are not properly characterized as "taxes" but rather as contractual obligations. Making clear that it is the analysis in this *Long Island Railroad* case, and not the dictum in *Teleprompter,* that is the best view and prevailing law today, is a review of the federal court decisions in *National Railroad Passenger Corp. v. City of New York, 695 F.Supp. 1570 (S.D.N.Y., 1988), upheld at 882 F.2d 710 (2d Cir.* 1989).

In the District Court decision in *National Railroad*, the court expressly relied on, among other sources, the New York State Court of Appeals decision in the *Long Island Railroad* case and expressly chose not to rely on the dictum in *Teleprompter.* The Second Circuit, in upholding the District Court, clearly relies on the same logic as *Long Island Railroad:* franchise fees set pursuant to a contract and which represent consideration for the right to use public streets are not reasonably construed as "taxes." Thus, on the specific question of the franchisee's argument that disputed revenues are attributable to taxes, DoITT disagrees with the position taken by TW Telecom.

As to the amounts the audit identified as unpaid, which TW Telecom argues are not reasonably attributable, as a geographical matter, to use of facilities in the City's rights-of-way, DoITT acknowledges the complicated nature of calculating in this context a proportionate allocation of revenue among different jurisdictions, especially given the ongoing evolution of telecommunications products and services, and the complexities arising from TW Telecom's and the Comptroller's arguments in relation to this issue. DoITT intends to have further discussions on this issue during upcoming franchise negotiations with TW Telecom and other current and potential franchisees with the objective of clarifying issues related to calculation of franchise fees that would reduce the likelihood of further disputes with regard to such matters going forward.

Again, I assure you that DoITT takes the reporting requirements and any outstanding payments of the franchises it oversees very seriously, and has carefully reviewed the findings contained in the audit report with the objective of further strengthening these controls and procedures. Accordingly, I would like to address DoITT's planned initiatives in response to the audit's recommendations.

> *Audit Recommendation:* Ensure TW Telecom pays the $856,757 in additional franchise fees and late charges recommended in this report and complies with the report's recommendations.
>
> *Proposed Action:* DoITT will pursue payment of the full balance owed to the City. DoITT also plans to seek in future franchise negotiations franchise terms that would better clarify issues related to calculation of franchise fees and would reduce the likelihood of further disputes with regard to such matters going forward..
>
> *Audit Recommendation:* Ensure that franchise fee calculations and other financial reports are properly submitted and reviewed in a timely manner, and establish proper guidelines to monitor TW Telecom's compliance with its City agreement.
>
> *Proposed Recommendation:* DoITT will continue to work aggressively to obtain the required reports and other data needed to substantiate franchise revenues owed to the City. Franchise fees must now be remitted directly to DoITT in order for the appropriate staff to monitor all payments and to ensure compliance with the revenue provisions of all franchise agreements. Late fee assessments will continue to be sent out in a timely manner and all late payments are now mandated to be paid directly to DoITT. Additionally, DoITT required that Franchise Commission Reports, comprised of a breakdown of all revenues, be submitted by franchisees to DoITT in order for appropriate staff to carefully review revenue and fees.

Thank you for the opportunity to comment on the TW Telecom audit. If you or your staff have questions regarding this response or wish to discuss the audit further, please contact me at 212-788-6640.

Sincerely,

Mitchel Ahlbaum

c: Stanley Shor
Wayne Kalish
Linda Mercurio
Bruce Regal
George Davis III