



**Request for City Council Committee Action
From the City Attorney's Office**

Date: December 15, 2005
To: Ways & Means/Budget Committee
Referral to:

Subject: Partial Settlement of Franchise Violations against KBL Cablesystems of Minneapolis, L P, dba Time Warner Cable ("Time Warner Cable").

Recommendation: That the City Council approve the partial settlement of the Franchise Violations brought by the City of Minneapolis against KBL Cablesystems of Minneapolis, L P, dba Time Warner Cable by resolving the violation notices for false and misleading statements, failure to submit annual report for the company's guarantor certified by the guarantor's chief financial officer and letter from the CPAs auditing the books and records of the guarantor's parent company; failure to provide income tax records; and, failure to comply with customer complaint procedures and reports by payment to the City of \$7,500.00 and upon other terms and conditions as discussed in this request. Further that the City Council authorize the City Attorney's Office or the law firm of Bradley & Guzzetta, LLC, to execute any documents necessary to effectuate this partial settlement.

Previous Directives:

Prepared by: Peter W. Ginder, Deputy City Attorney Phone: 673-2478

Approved by: _____
Jay M. Heffern City Attorney
Gail Plewacki
Cable Communications Officer

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain):
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals:

Background/Supporting Information

Time Warner Cable was scheduled to appear before the Ways & Means Committee of the City Council for a hearing on violation notices issued by the City's Cable Communications Officer alleging violations of the Minneapolis Cable Franchise. Nine franchise violations were noticed for hearing by the Cable Communications Officer. Contingent upon your approval, staff is recommending that four of those violations be resolved. The remaining violations are being rescheduled in order to allow the City and Time Warner Cable to enter into mediation regarding those matters. If the mediation is unsuccessful, those matters would return for hearing before this committee. The proposed terms for the four franchise violations to be settled are:

1. Time Warner Cable will pay the City \$7,500 within thirty (30) days of this agreement. This amount shall not be offset against the franchise fee, or other payments to the City, or passed through to subscribers.
2. Time Warner Cable will agree to cease using the "two form" approach to calculating FCC Form 1240 rates (as reflected in the FCC Form 1240 filed with the City for 2006). Time Warner and any successor will prepare and file FCC Forms 1240 consistent with FCC rules, orders and instructions.
3. Time Warner Cable provide the City with a quarterly "call center" report reflecting call center processes for handling customer calls, CSR training guidelines, and CSR staffing for the call center that handles calls from customers in the City.
4. The City hereby withdraws the following Violation Notices and deems Time Warner Cable in substantial compliance with the franchise obligations addressed therein:
 - Violation Notice dated April 21, 2005 re: False and Misleading Statements.
 - Violation Notice dated July 26, 2005 re: Failure to Submit Annual Report for the Company's Guarantor Certified by the Guarantor's Chief Financial Officer and Letter from the CPAs Auditing the Books and Records of the Guarantor's Parent Company
 - Violation Notice dated July 26, 2005 re: Failure to Provide Income Tax Records
 - Violation Notice dated July 26, 2005 re: Failure to Comply with Customer Complaint Procedures and Reports
5. The City further agrees that it will not re-allege violations with respect to the same franchise provisions under the same or substantially similar facts for so long as the existing franchise remains applicable.
6. The City agrees to stay further enforcement proceedings regarding the Violation Notice dated April 21, 2005 re: Exclusion of Cable Modem Service Revenue from Calculation of Franchise Fees until after a final decision from the U.S. Court of Appeals for the 8th Circuit regarding any appeal of the U.S. District Court's November 10, 2005 decision in *Minneapolis v. Time Warner Cable, Inc.*, Civ. No. 05-0994 ADM/AJB.
7. This agreement shall be binding on Time Warner Cable and its lawful successors and assigns for as long as the existing franchise remains applicable.

The Cable Communications Officer and the City Attorney's Office believe this is an appropriate resolution of the four franchise violations and recommend the proposed settlement.