



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

CABLE TELEVISION

IN THE MATTER OF TWFANCH-ONE CO., D/B/A)	ORDER ACCEPTING
TIME WARNER CABLE, WITH RESPECT TO THE)	
COLLECTION AND PAYMENT OF MUNICIPAL)	STIPULATION OF SETTLEMENT
FRANCHISE FEES AND THE STATE)	
ASSESSMENT)	BPU DOCKET NO. CO06030140

(SERVICE LIST ATTACHED)

BY THE BOARD

This matter considers the proposed Stipulation of Settlement between TWFanch-One Co., d/b/a Time Warner Cable ("TWC"), and the Office of Cable Television ("OCTV" or Staff") within the Board of Public Utilities ("Board") (collectively, "Parties") resolving all issues involving TWC's collection of municipal franchise fees from subscribers from 1999 through 2005 and payment of municipal franchise fees from 1999 through 2004.

TWC is a cable television company which provides service in fourteen northern New Jersey counties ("Bergen system"). It is owned by Time Warner Cable, Inc., which is based in Stamford, Connecticut.

N.J.S.A. 48:5A-30 requires that each cable television company operating in the State of New Jersey must pay franchise fees to each municipality in which it provides service in the amount of 2% of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to its cable television reception service in the municipality. N.J.S.A. 48:5A-32 requires all cable television companies operating in the State of New Jersey pay to the State of New Jersey an assessment so as to enable the OCTV to perform its lawful duties and responsibilities under the Act (the "State assessment").

Each cable television company operating in the State of New Jersey is also required to submit Forms CATV-1 and CATV-2 to the Board annually, wherein they provide: i) the amount of gross revenues derived by the cable television company from intrastate operations for the year; ii) a breakdown of the gross revenues reported into various categories by municipality; and iii) the amount of the municipal franchise fee paid to each municipality served by the cable television company.

In the course of review of TWC's 2003 annual Form CATV-2, Staff noted certain irreconcilable differences when attempting to calculate the municipal franchise fees paid to municipalities. This triggered Staff to send an initial set of data requests.

TWC responded on or about April 29, 2005 and provided more detail including a reconciling summary of the basis for the municipal franchise fee payments which indicated possible errors in the calculation and payment of municipal franchise fees.

In an attempt to determine the extent of these errors, commencing on June 10, 2005, Staff expanded its discovery requests to encompass CATV-2s from 1999 to 2002 and 2004 and collection of municipal franchise fees and the State assessment from subscribers for the years 1999 through 2005. On various dates from August 11, 2005 to March 14, 2006, TWC provided substantial information in response to the Staff's additional requests.

At a meeting held on August 16, 2005, Staff and TWC agreed that: (i) the amounts collected from subscribers in the Bergen System attributable to charges for municipal franchise fees on certain programming and equipment pertaining to the years 1999 through and including 2005 were in error, and had resulted in overcharges to subscribers, and (ii) the amounts paid to municipalities in the Bergen System for municipal franchise fees pertaining to the years 1999 through and including 2004 were also in error, and had resulted in underpayments to municipalities.

Thereafter, the Parties continued their discussions which led to a final agreement on March 21, 2006 and the execution of a Stipulation of Settlement (Stipulation) to memorialize the Parties' agreement. The pertinent provisions of the Stipulation are as follows:

1. No later than 60 days from the date of the Board Order approving the Stipulation of Settlement, TWC will pay the principal sum of \$200,456.18, in the aggregate, plus interest, to the municipalities it serves in the Bergen System, to be paid pro rata in proportion to the number of subscribers in each municipality. Interest shall accrue on the principal sum from April 1, 2006 through the date of payment, compounded daily using the IRS interest rates for over and under payments utilized by the FCC.
2. TWC will credit each Basic Service only subscriber in the Bergen System who was a subscriber during the period from January 1, 2001 through April 30, 2002 and who utilized a converter and was charged a municipal franchise fee on the amount of the converter rental, a credit in the amount of \$1.19 plus interest compounded daily from April 1, 2006, using the IRS interest rates for over and under payments utilized by the FCC, through the date of payment. Such credit shall be applied on affected subscribers' bills no later than sixty (60) days from the date of a Board Order approving this Stipulation of Settlement, which will be the same date as the first month the credit provided to Preferred Tier service customers described in the paragraph below will be implemented;
3. TWC will credit each current Preferred Tier service subscriber in the Bergen System in the amount of \$9.17 plus interest compounded daily from April 1, 2006, using the IRS interest rates for over and under payments utilized by the FCC, through the date of payment. Said credit will be implemented in equal installments over a two-consecutive month period (the "monthly credits" starting no later than sixty (60) days from the date of a Board Order approving this Stipulation of Settlement).
4. Effective as of December 13, 2005, TWC has corrected the error in its collection of municipal franchise fees from subscribers of certain programming service tiers in the Bergen System.

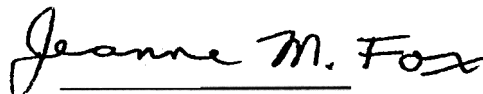
Staff found that the parties have voluntarily agreed to the Settlement and that the Settlement is consistent with the law and fully disposes of all issues in controversy. The Staff also found that the stipulated refund liability is just and reasonable and in compliance with N.J.S.A. 48:5A-30.

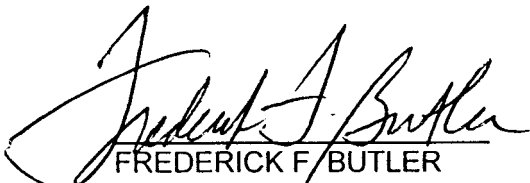
The Board has reviewed the Stipulation and HEREBY FINDS it to be reasonable, in the public interest and in accordance with the law. Therefore, the Board HEREBY ADOPTS the Stipulation of Settlement attached hereto in its entirety as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

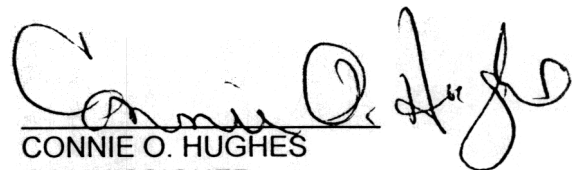
The Board HEREBY DIRECTS TWC to issue the refunds due its subscribers and payments to municipalities in the Bergen System pursuant to the Stipulation of Settlement within sixty (60) days of the date of this Order, and inform them of the reason for the refund and payment. The refund shall be denominated "BPU Refund" on subscribers' bills. Municipalities shall be informed of the payments due them in the remittance correspondence accompanying the payments. The Board FURTHER ORDERS that TWC, within ten (10) days of effectuating the entire refund to its subscribers and payment to each municipality, certify in writing to the OCTV that the refunds and payments have been completed, and provide to OCTV a final accounting for each municipality and for subscribers.

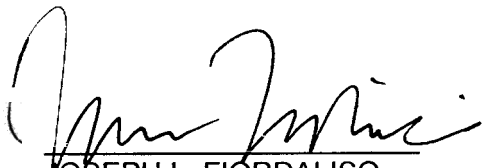
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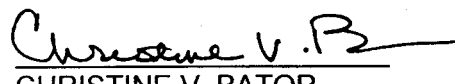
BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER

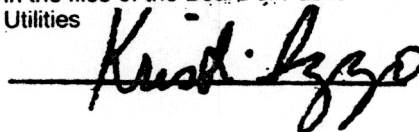

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



SERVICE LIST
IN THE MATTER OF TWFANCH-ONE CO., D/B/A TIME WARNER CABLE, STIPULATION
AND SETTLEMENT WITH RESPECT TO THE COLLECTION AND PAYMENT OF
MUNICIPAL FRANCHISE FEES AND THE STATE ASSESSMENT

DOCKET NO. CR06030140

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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION**

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IN THE MATTER OF TWFANCH-ONE CO.,
D/B/A TIME WARNER CABLE, WITH
RESPECT TO THE COLLECTION AND
PAYMENT OF MUNICIPAL FRANCHISE)
FEES AND THE STATE ASSESSMENT)

STIPULATION OF SETTLEMENT
Docket No. CO06030140

WHEREAS, TWFanch-One Co., d/b/a Time Warner Cable (“TWC”), operates a cable television system serving fourteen (14) municipalities in Northern New Jersey (to wit, Cliffside Park, Edgewater, Englewood, Englewood Cliffs, Fairview, Fort Lee, Leonia, Little Ferry, Moonachie, Palisades Park, Ridgefield, Ridgefield Park and Teterboro in Bergen County and Guttenberg in Hudson County) (the “Bergen System”); and

WHEREAS, TWC is subject to the jurisdiction of the Board of Public Utilities (the “Board”) and the Office of Cable Television (“OCTV”), within the Board, pursuant to the New Jersey Cable Television Act, N.J.S.A. 48:5A- et seq. (the “Act”), and the New Jersey Administrative Code, N.J.A.C. 14:18 .1 et seq. (the “Regulations”); and

WHEREAS, New Jersey cable television companies are required to comply with the provisions of the Act and the Regulations issued thereunder; and

WHEREAS, pursuant to the Act, N.J.S.A. 48:5A-30(a), each cable television company operating in New Jersey is required to pay to each municipality in which it provides cable

television service a municipal franchise fee in the amount two percent (2%) of the recurring revenues received by the cable company from cable television reception service from subscribers in each respective municipality (the “municipal franchise fee”); and

WHEREAS, pursuant to the Act, N.J.S.A. 48:5A-32, each cable television company operating in New Jersey is required to pay to the State of New Jersey an assessment so as to enable the OCTV to perform its lawful duties and responsibilities under the Act (the “State assessment”); and

WHEREAS, the State assessment shall be in an amount derived in accordance with N.J.S.A. 48:5A-33; and

WHEREAS, New Jersey cable television companies are permitted to pass through to customers on subscriber bills the municipal franchise fee and the State assessment (together, “charges”);

WHEREAS, each cable television company operating in New Jersey is required to submit annually to the Board Forms CATV-1 and CATV-2, setting forth the amount of revenues derived by the cable television company from intrastate operations, together with a breakdown of said revenue into various categories (i.e., basic service, additional outlet, equipment, cable programming service, installation, gross pay service, advertising and other revenue), as well as setting forth the amount of the municipal franchise fee paid to each municipality served by the cable television company; and

WHEREAS, TWC, as required by N.J.S.A. 48:5A-30, paid to each municipality it serves in the Bergen System municipal franchise fees pertaining to the years 1999 through and including 2004; and

WHEREAS, TWC paid to the State of New Jersey the State assessment pertaining to the

years 1999 through and including 2004, imposed upon TWC in accordance with N.J.S.A. 48:5A-32 and 33; and

WHEREAS, TWC timely submitted to the Board of Public Utilities (“BPU”) Forms CATV-1 and CATV-2 pertaining to the years 1999 through and including 2004; and

WHEREAS, TWC and the OCTV became aware of a possible error in (1) the amount of charges collected by TWC from subscribers in the Bergen System pertaining to the years 1999 through and including 2005; and (2) the amount of municipal franchise fees paid to the municipalities served by TWC in the Bergen System pertaining to the years 1999 through and including 2004, and

WHEREAS, the OCTV has requested that TWC submit responses to various information requests in connection with said inquiry; and

WHEREAS, TWC has provided substantial information to the OCTV in response to the OCTV’s requests, detailing (i) the amounts collected from subscribers in the Bergen System for charges pertaining to the years 1999 through and including 2005, and (ii) the amounts paid by TWC to the municipalities served in the Bergen System for municipal franchise fees pertaining to the years 1999 through and including 2004; and

WHEREAS, after a review of the information provided by TWC pertaining to said inquiry, the OCTV and TWC have agreed that (i) the amounts collected from subscribers in the Bergen System attributable to charges pertaining to the years 1999 through and including 2005 were in error and (ii) the amounts paid to municipalities in the Bergen System for municipal franchise fees pertaining to the years 1999 through and including 2004 were in error; and

WHEREAS, the OCTV and TWC (together, the “Parties”) have agreed upon a course of action so as to correct said collection of charges and payment of municipal franchise fees;

NOW, THEREFORE, TWC and OCTV hereby enter into this Stipulation of Settlement as follows:

- 1 No later than 60 days from the date of a Board Order approving this Stipulation of Settlement, TWC will pay the principal sum of \$200,456.18, in the aggregate, plus interest, to the municipalities it serves in the Bergen System, to be paid pro rata in proportion to the number of subscribers served in each municipality. Interest will continue to accrue on the principal sum from April 1, 2006 and will be compounded daily, using the IRS interest rates for over and under payments utilized by the FCC, through the date of payment. The principal sum was calculated in accordance with supporting information supplied by TWC to the OCTV during the course of the OCTV's inquiry in this matter.
- 2 TWC will (a) credit each Basic Service only subscriber in the Bergen System who was a subscriber during the period from January , 2001 through April 30, 2002 and who utilized a converter and was charged a municipal franchise fee on revenue from said converter rental, said credit to be in the amount of \$1.19 plus interest compounded daily from April 1, 2006, using the IRS interest rates for over and under payments utilized by the FCC, through the date of payment. Such credit shall be applied no later than sixty (60) days from the date of a Board Order approving this Stipulation of Settlement (on the same date as the first month the credit in b) will be implemented); and

(b) credit each current Preferred Tier service subscriber in the Bergen System in the amount of \$9.18 plus interest compounded daily from April 1, 2006, using the IRS interest rates for over and under payments utilized by the FCC, through the

date of payment (refer to Schedule A- Refund Schedule); said credit to be applied in equal installments over a two-consecutive month period (the “monthly credits”) starting no later than sixty (60) days from the date of a Board Order approving this Stipulation of Settlement


3. TWC has discontinued the collection of municipal franchise fees from subscribers in the Bergen System on revenues obtained from the Preferred Tier of service, effective December 13, 2005.
4. The execution of this Stipulation of Settlement shall neither be deemed an admission by TWC of any violation of the Act, the Regulations or any Board Order, nor a determination by the Board or the OCTV that such a violation has occurred
5. This Stipulation of Settlement is subject to the approval of the Board. Compliance by TWC with this Stipulation of Settlement, if approved by the Board, resolves all issues, and shall relieve TWC of any further liability or obligation, relating or pertaining to or in connection with the collection of charges from subscribers in the Bergen System pertaining to the years 1999 through and including 2005 as well as the payment of municipal franchise fees to the municipalities TWC serves in the Bergen System and to the Board pertaining to the years 1999 through and including 2004
6. The Parties agree that, except as expressly provided herein, this Stipulation of Settlement has been made exclusively for the purpose of these proceedings and that the provisions contained herein, in total or by specific items, shall not be used against either of the Parties in any other proceedings before the Board or in other

forums or jurisdictions, nor shall the contents of this Stipulation of Settlement, in total or by specific items, by inference, inclusion, or deletion, in any way be considered or used by any other Party as any indication of the position of any Party hereto on any issue litigated or to be litigated in other proceedings.


Parties acknowledge that the terms of this Stipulation of Settlement shall not be effective until approved by the Board.

7. This Stipulation of Settlement contains terms each of which is interdependent with the others and essential in its own right to the signing of this Stipulation of Settlement. Each term is vital to the agreement as a whole, since the Parties expressly and jointly state that they would not have signed the agreement had any term been modified in any way. Each Party is entitled to certain procedures in the event that any modification is made to the terms of this Stipulation of Settlement, pursuant to which each of the Parties hereto must be given the right to be placed in the position it was in before this Stipulation of Settlement was entered. Therefore, if any modification is made by the Board to the terms of this Stipulation of Settlement, it is essential that each Party first be given the option either to modify its own position, to accept the proposed changes, or to resume the proceedings as if no agreement had been reached.
8. The Parties believe these provisions are fair to all concerned and therefore they are made an integral and essential element of this Stipulation of Settlement. being the case, the Parties expressly agree to support the right of the other Party to this Stipulation of Settlement to enforce all terms and procedures detailed herein.

TWFanch-One Co., d/b/a Time Warner Cable

BY: 
Dennis C. Linken

ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Office of Cable Television

BY: 
Kenneth J. Sheehan
Deputy Attorney General

Dated March 21, 2006

SCHEDULE A

Time Warner Cable - Bergen system
Subscriber Refund (including interest)
Recap report

	Preferred Tier Refund	Basic Only Refund	Total Refund
Due to Subscribers, including interest thru 03/31/06	\$367,425.32	\$58.54	\$367,483.86
Refund issuance: Refund payment (1 of 2)	\$183,712.66	\$58.54	\$183,771.20
Refund payment (2 of 2)	<u>\$183,712.66</u>	<u>\$58.54</u>	<u>\$183,712.66</u>
	<u>\$367,425.32</u>	<u>\$58.54</u>	<u>\$367,483.86</u>

Subscribers (avg. subscribers 02/06)

40,063 49

Refund per subscriber (1 of 2)

\$4.59 \$1.19

Refund per subscriber (2 of 2)

\$4.59

Plus interest from April 1, 2006 through date of payment.