

BOARD OF ALDERMEN

ITEM NO. D(2)

AGENDA ITEM ABSTRACT

MEETING DATE: August 15, 2006

SUBJECT: Proposed Audit Settlement with Time Warner Cable Tied To Future Franchise Compliance

DEPARTMENT: MANAGER'S OFFICE	PUBLIC HEARING: NO
ATTACHMENTS: A – Resolution accepting terms of settlement B – Relevant section of franchise C – Letter sent to TWC on 5/22/06	FOR INFORMATION CONTACT: Drew Cummings (918-7314)

PURPOSE

The Town would like to complete its negotiations with Time Warner Cable (TWC) with regard to the audit of the years 2002 – 2005. There were a number of questions that needed to be resolved and Town staff believe they have reached an acceptable settlement proposal which includes payment of many debts uncovered in the audit as well as improved compliance with the franchise agreement.

INFORMATION

Negotiations with TWC about the 2002-2005 audit (conducted for the Town by Lewis & Associates) of franchise compliance uncovered a number of sticking points. Some of these points are of lesser financial / other consequence than others. Town staff and TWC staff have negotiated a proposed settlement of that audit. While Town staff do not feel that the logic underlying TWC arguments is correct, some of the points can be legitimately argued and the outcome of any legal proceedings could not be predicted with certainty. Town staff feel that any further time spent by Town / legal staff pursuing final resolution of *all* these issues would quickly consume the difference between the full settlement amount and the proposed / negotiated settlement amount.

On one important franchise matter, however, Town staff believe that TWC must comply. According to Section 28C of the franchise agreement, TWC must provide “such information as it has reasonably available regarding its customers’ addresses.” Town staff believes this to be an important way of double- checking TWC customer counts, and proposes tying acceptance of the proposed settlement amount to TWC compliance with this particular provision of the franchise agreement.

The Town has further tools for enforcing the franchise agreement if the terms of the negotiated settlement are not accepted.

FISCAL IMPACT

Unclear. Presuming it could have won legal challenges on all disputed franchise issues, the Town may lose some revenue by accepting this negotiated settlement. If the condition of settlement is accepted by TWC, however, Town staff believes that the Town *will* gain more than it *might* have lost.

RECOMMENDATION

Town staff recommends that the Board of Aldermen approve the resolution accepting proposed negotiated settlement if TWC agrees to abide by the proposed terms.