
October 15, 1999

Ms. Carole Barice
Attorney-at-Law
Fowler, Barice, Feeney & O'Quinn
28 West Central Boulevard
Orlando, FL 32801

Dear Carole:

I am very pleased to present you with a copy of our final audit of franchise fees paid to the City of Altamonte Springs by TCI TKR of Central Florida, Inc.

I hope you find this information useful; I know you'll find it interesting.

I wanted to thank you and your staff, Phil Penland and the members of the Altamonte Springs City Commission for all their help throughout the course of this audit. (FYI, we are estimating the cost to this office of conducting the audit – the Altamonte Springs portion – at \$2,750.00.)

Your cooperation is deeply appreciated.

Sincerely,

Maryanne Morse
Clerk of the Circuit Court

Prepared by: Internal Audit Division Clerk of the Circuit Court
--

CITY OF ALTAMONTE SPRINGS

TCI TKR OF CENTRAL FLORIDA, INC. FRANCHISE FEE AUDIT

The Internal Audit Division of the Office of the Clerk of the Circuit Court has completed an audit of franchise fees paid to the City by TCI TKR OF CENTRAL FLORIDA, INC. (hereafter TCI). Mr. Phillip D. Penland, the city manager, requested this audit.

PURPOSE

The purpose of the audit was to determine if the amount of franchise fees remitted by TCI to the City was accurate, complete, and in compliance with the requirements of City of Altamonte Springs Ordinance No. 1268-97 and other applicable city laws. In addition, the audit was performed to determine if the administrative controls are adequate and operating as intended in compliance with applicable laws, regulations, and other City of Altamonte Springs policies and procedures.

BACKGROUND

On November 12, 1986, the Altamonte Springs City Commission (hereafter ASCC) enacted Ordinance No. 881-86 under the home rule power of the City. The ordinance has been updated since 1986 and the ordinance now in effect is Ordinance No. 1268-97. The purpose of having the ordinance is to provide the regulations, conditions, and provisions for the installation, operation, and maintenance of Cable Television Systems (CATV) within the City of Altamonte Springs, Florida.

For the right to use the City streets, easements, and right-of-ways, TCI is required to pay the City five percent (5%) of its gross annual revenue. Ordinance No. 1268-97 defines "gross annual revenue as **all revenue from all sources**, including cash, credits, property of any kind or nature or other consideration, which is derived directly or indirectly by a Grantee, its affiliates, subsidiaries, parent corporation, and any other person or entity in which the Grantee has a financial interest or which has a financial interest in the Grantee arising from in connection with or is attributable to operation of a cable television system to provide cable service within the City.....from the operation of the system."

TCI is also required to submit "a certified financial statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceeding quarter and a detailed explanation of the method of calculation for such period. This statement shall be certified by the financial officer, shall state on a monthly basis TCI's gross revenue derived from the operation of its cable

Prepared by: Internal Audit Division Clerk of the Circuit Court

system during the applicable three month period and the calculations determining the franchise fee for such period, and shall be submitted along with such information as the city may reasonably request.”

The results of the audit are included in the report that follows.

SCOPE

The scope of this audit included a review of records from January 1996 to June 1999. During that time, the City received franchise fees of \$2,202,435.04.

The audit included:

- Review of the procedures being used to ensure compliance with the ASCC Ordinance No. 1268-97 and other applicable city laws and compliance with established policies and procedures, Florida State Statutes, and other applicable government regulations;
- Review of internal controls to ensure that franchise fees are accurately billed to customers at the correct amount and rate, and in a timely manner;
- Review of TCI remittances for accuracy and timeliness;
- Review of the payments reported via the company’s billing system reports;
- Review of records being maintained by the City;
- Review of the ASCC ordinances for conditions and provisions for payment of the franchise fee;
- Interviews of key personnel; and,
- Other such review procedures considered necessary in the circumstances.

Fieldwork began July 27, 1999, and was completed on August 13, 1999. The audit was performed by Bill Carroll and Pat Tindel.

OVERALL EVALUATION

TCI did not remit the full value of the franchise fees due the City. On average, TCI remittances were understated by 3.3% to 3.7% for the period tested from January 1996 to June 1999. Consequently, for the period September 1985 through June 1999, we estimate that the company under paid by approximately \$71,300.87. The total amount owed by TCI, including penalties and interest, is \$273,729.33.

For a detailed discussion of the factors contributing to fees owed refer to Finding No. 1 on page 4 of this report.

Prepared by: Internal Audit Division Clerk of the Circuit Court

FINDING NO. 1

FINDING

TCI did not submit all of the franchise fees due the City.

As payment to the City for the rights to use the City streets, easements and right-of-ways, TCI is required to submit franchise fees (five percent of gross annual revenues) to the City each quarter based on its Gross Revenues in the City of Altamonte Springs.

Ordinance No. 1268-97 defines "gross annual revenue as **all revenue from all sources**, including cash, credits, property of any kind or nature or other consideration, which is derived directly or indirectly by a Grantee, its affiliates, subsidiaries, parent corporation, and any other person or entity in which the Grantee has a financial interest or which has a financial interest in the Grantee arising from in connection with or is attributable to operation of a cable television system to provide cable service within the City.....from the operation of the system." Thus, **all revenue, regardless of the source** is subject to the franchise fee provision of the ordinance.

Two conditions contributed to the under remittance of franchise fees.

- TCI totals the payments collected from its subscribers for the month, deducts for taxes (i.e. Sales Taxes), and multiplies the balance by five percent (5%) to arrive at the franchise fees due the City. Although, TCI collects seven percent (7%) from its subscribers for sales tax, it deducts nine percent (9%) from the base to apply the five percent (5%) franchise fee. Consequently, TCI is applying the five percent (5%) to a smaller base. Thus, the City is not receiving its fair share of the money received from the subscribers.

For the period January 1996 to December 1998, TCI collected \$13,022,532.61 from its subscribers. Subtracting nine percent (9%) results in a base of \$11,947,277.62 with a franchise fee of \$597,363.88. By subtracting seven percent (7%) results in a base of \$12,170,591.22 or a franchise fee of \$608,529.55. The net effect is that the franchise fee is understated by \$11,165.67.

- TCI did not include all sources of revenue in the franchise fee base. For 1996, 1997, and 1998, there is \$258,021.20 in

revenue for late charges, digital and a category of revenue referred to as TVRO that is not included in the submittal to the City. The net effect is that the franchise fee is understated for these years by \$12,901.05.

We calculated that on average TCI remittances were understated by roughly 3.3%. Consequently, for the period September 1985 through June 1999, we estimate that the company under paid by approximately \$71,300.87, not including penalties and interest. The total amount owed by TCI, including penalties and interest, is \$273,729.33. However, by limiting the liability to only the last three years, the amount payable to the City calculates to \$38,597.57.

The following worksheets illustrate the franchise fees owed to the City.

Schedule	1	1996 worksheet of franchise fees
Schedule	2	1997 worksheet of franchise fees
Schedule	3	1998 worksheet of franchise fees
Schedule	4	1999 worksheet of franchise fees
Schedule	5	Summary worksheet
Schedule	6	Calculation of fees owed for back taxes
Schedule	7	Calculation of fees owed for back taxes 1996 -1999
Schedule	8	Interest Calculations