COUNCIL OF THE CITY OF PHILADELPHIA

PUBLIC HEARING

COMMITTEE ON PUBLIC PROPERTY AND PUBLIC WORKS

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Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, February 17, 2005
1:50 p.m.

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BILL 041071 - An Ordinance consenting to the transfer of control of the Area II cable television franchise from Urban Cable Works of Pennsylvania, LLC to Time Warner Cable...

PRESENT:

COUNCILMAN DARRELL CLARKE, Chair
COUNCILMAN JAMES KENNEY
COUNCILMAN JACK KELLY
COUNCILMAN FRANK RIZZO
COUNCILMAN MICHAEL NUTTER
COUNCILMAN W. WILSON GOODE, JR.

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I N D E X

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COUNCILMAN CLARKE: Good afternoon. I'm sorry for the delay. This will be the hearing that was recessed on the Committee of Public Property and Public Works.

Will the Clerk please read the title of the bill.

THE CLERK: Bill No. 040700 is being held at the request of the sponsor, Councilman Mariano.

Bill No. 041071, an ordinance consenting of transfer of control of the Area II franchise from Urban Cable Works of Pennsylvania, LLC, to Time Warner Cable Inc. and the transfer and assignment of the Area II cable television franchise from Urban Cable Works of Philadelphia, L.P. to Time Warner Cable Inc., both under certain terms and conditions.

COUNCILMAN CLARKE: Thank you.

For the record, a member of the Committee Councilman Frank Rizzo. Also present is Councilman Michael Nutter.

The first witness, will you please read your name into the record?

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MR. JAMES: Good afternoon, Councilman. My name is Joseph James, I'm Deputy Commissioner for the Department of Public Property. I'm here on behalf of the Administration to speak to Bill No. 041701. I've provided written testimony and gave that testimony at the previous hearing. I have no written testimony today, but I would like to offer an amendment to that bill. I'd like to speak to the provisions of the amendment which we have provided copies.

COUNCILMAN CLARKE: Proceed.

MR. JAMES: The amendments deal with two specific provisions which I will read into the record. And they deal with Time Warner Cable shall execute an agreement substantially in the form attached hereto as Exhibit C with additional provisions to the following effect and specific form and content satisfactory to the City Solicitor.

Number 1, within 90 days following the execution of this assumption agreement, Time Warner Cable shall be in full material compliance with all terms and conditions of the franchise agreement, the 1999 assumption agreement and the 1999 supporting agreement or shall pay to the City liquidated damages as provided in the franchise agreement or in the case of the terms and conditions of the 1999 assumption agreement and supporting agreement liquidated damages of $250 per day for each day that such non-compliance continues and for each breach and shall be subject to all other applicable remedies provided by the franchise agreement. Any imposition of the liquidated damages with respect to the term and conditions of the 1999 assumption agreement and supporting agreement shall be in accordance with the procedural requirements of the franchise agreement with respect to liquidated damages.

Number 2, Time Warner Cable shall submit to the City, not later than May 1, 2005, an updated revision of the 15-year projections attached as Exhibit B to the supporting agreement. The revised projection shall provide: One, actual figures for years 1999 through 2004 in each reporting category except as reasonable agreed otherwise by the parties. Two, projections for the year 2005 in all reporting categories except as reasonably agreed otherwise by parties, including but not limited Operating and Capital budgetary projections for year 2005. And three, further detail in the capital expenditures and investment reporting category by identifying in separate line items projections for investments and projections for capital expenditures for equipment, distribution plant, subscriber equipment and other expenditures. Time Warner Cable shall submit such revised projections each year providing actual figures in each reporting category except as reasonably agreed otherwise by the parties for the preceding five years an projections in each reporting category for the upcoming year including but not limited to Operating and Capital budgetary projections for the upcoming year. Such revised projections shall be subject to the confidentiality provisions of Article 2 Section 11 of the franchise agreement.

COUNCILMAN CLARKE: Thank you.

Is that the end of your testimony?

MR. JAMES: That would be the end of my testimony.

COUNCILMAN CLARKE: Are there any questions of this witness by members of the Committee?

(No response.)

COUNCILMAN CLARKE: Councilman Nutter.

COUNCILMAN NUTTER: Thank you, Mr. Chairman. Mr. James, I'd like to ask you some questions both about this document, which you just handed this up today; is that correct?

MR. JAMES: That is correct.

COUNCILMAN NUTTER: So I was reading it as you were reading it for the first time, but let me ask a couple questions.

One, what was the circumstance or the nature of the need for this amendment in the first place?

MR. JAMES: The reason for the amendment was a number of reasons. In our review of the franchise agreement in the assumption agreement from 1999 and our review of the franchise as part of our review process, we wanted clear up an issue of liquidated damages as they apply to the assumption agreement and supporting agreement.

It appeared in our review, there is specific language in the franchise agreement that speaks to liquidated damages in most categories with a specific dollar amount for compliance. When we reviewed the assumption agreement, it did not appear that the assumption agreement was fully incorporated into the franchise agreement.

COUNCILMAN NUTTER: This is the assumption agreement from the previous transfer in 1999?

MR. JAMES: That is correct. When we did the transaction before Council in 1999, it was done in a two-phase effort. First, it was a renewal of the Wade Cable franchise which already existed in Area II. It was renewed as Wade Cablevision in 1999. The next thing we did was a transfer from Wade Cablevision to Urban Cable Works of

Philadelphia. So in review, the transfer, which the transfer incorporated the assumption agreement which were additional provisions that we were requesting at the time was done after the franchise had already been renewed, and it did not appear in the legal review there was language in that final document that incorporated all of those provisions into the franchise agreement.

COUNCILMAN NUTTER: And when you were last before the Committee, your testimony, of course, was necessarily brief. You were, I think, slightly under the weather and had to go to another meeting. What I'd like to get is a little better understanding of not the longer history for the moment of the transfer process, but I'm left with the impression from reading some of the documents that there may have been some earlier compliance issues with regard to the franchise agreement prior to your testimony and the conclusions that you had reached at that time. Could you explain to us what some of these compliance issues were?

MR. JAMES: Yes. And I'm appreciative to Council at the time that I was under the weather and had to go to Harrisburg for a meeting on that day and I appreciate the fact that I was able to not have to get into detailed testimony then.

In our review of the franchise, there were specific provisions that the Administration or the City felt that the franchisee was not in full compliance on all the provisions as far as meeting specific dates for generating specific reports that were part of the obligations in the franchise. We request, as part of the franchise, annual reports. We request as part of the assumption agreement penetration reports, revenue reports that give us specific details on the performance of the franchise. We had also questioned --

COUNCILMAN NUTTER: Did you receive any of those reports in the time period between 1999 and what I guess would be 2004?

MR. JAMES: I would say that we did receive reports. They were not delivered at the time or the date when they were due, but we did get all the reports that bring the franchise in compliance. If we had been applying the letter of the law that was in the franchise of the agreement, we could have argued over the fact that they were required to pay damages for not meeting those specific dates, but we did not do that as a matter of course. We worked with the franchisees to get the information. There was a bit of transition. They were a new franchisee in this area. We were trying to be supportive and helping the franchise to get in full compliance. We have since received all of the information that we have requested. But it was clear that when we looked at this, there were certain specific provisions in the assumption agreement such as the Community Advisory Committee that had not been instituted that was a requirement and it needed to be completed. It needed to be instituted. We have approved just recently amended bylaws that we have returned to the franchisee to establish the advisory committee. We've also instructed the franchisee to be in contact with those folks who may have submitted names in the past to be on the Advisory Committee to find out if they're still interested in being on the Advisory Committee so that they would have a list of candidates upon quick action they could be able to put this Committee in place and start that effort.

COUNCILMAN NUTTER: When is it required to be in place?

MR. JAMES: I believe in the original agreement it was required in -- I'll have to get the actual document. It was a short period after the time that we did the transaction.

COUNCILMAN NUTTER: Okay.

Now, I need to really test your recollection, and there may be others who could be helpful. Would you layout for us some of the history of the Area II franchise by way of transactions, as well as ownership interest with a particular emphasis on either minority ownership or minority persons participation as relates to ownership interest in this particular franchise?

MR. JAMES: My recollection of the history of the franchise for Area II, back in 1983 and '84 when the franchises were first being put together as part of the City Council ordinance, there was a provision by Council to establish a minority franchise out of the four franchise areas that were designated in the City. Area II was awarded a franchise to, I believe, then Jim Wade as Wade Cablevision, the owner of the franchise for Area II which was a minority interest. That franchise over time has gone through a number of, I would say, partnerships and/or additional interests in support of the financial viability of the franchise which over time always included a component of Time Warner in some degree as an interest in support of the franchise but not the majority partner.

COUNCILMAN NUTTER: Now, when was this?

MR. JAMES: I'll have to get the specific dates to you. It was certainly after the 1984 award. Let me get the specific date. I don't want to make a mistake on the record. But the history of the franchise really culminated in the 1999 renewal --

COUNCILMAN NUTTER: Let's go to the '83-'84 time period for a moment. What was Council's action back at that time?

MR. JAMES: My recollection of the history is that City Council at that time, when they were making an award and they were looking for four franchise areas, that there was some consideration for a franchise to be in the ownership of or at least significantly have a component a minority interest component. That resulted in Wade Cablevision being awarded the Area II franchise and minority owner being Jim Wade or the owner of the franchise being Jim Wade and Wade Cablevision.

COUNCILMAN NUTTER: And did Mr. Wade at that time own the franchise solely, or were there partners?

MR. JAMES: I don't recall exactly in 1984 whether it was entirely owned by Mr.

Wade or if he had partners. I can research the question for you.

COUNCILMAN NUTTER: I understand.

What happened between 1983-'84 time period and 1999?

MR. JAMES: My recollection of the history of the franchise was that over time, if not initially, Mr. Wade added additional partnership in support of the franchise. I believe at some point in that history Time Warner either became a partner or had a partnership interest in the franchise. That reached its culmination in 1999 when we are doing the cable franchise renewal that we were advised that Wade Cablevision was going to be transferring its interests to a new entity of Urban Cable Works which was a formation of a new entity Urban Cable Works of Philadelphia along with Inner City Communications out of New York, and Time Warner was going to be at that point in time have a 40 percent interest in the ownership of the franchise and that Time Warner Entertainment, a subsidiary of Time Warner, would have an operating agreement to manage the operation of the franchise for the term of the franchise.

COUNCILMAN NUTTER: Is it accurate to say that from - let's take 1984 as a starting point. It is either by coincidence or just timing that these franchises are generally for 15 years?

MR. JAMES: That is correct.

COUNCILMAN NUTTER: During the period from '84 to '99, was there ever a time when there was not either minority ownership or participation in the franchise, from an ownership standpoint?

MR. JAMES: In some fashion, I think that is true. There have always been some component of minority interest in the franchise ownership.

COUNCILMAN NUTTER: And then from the time period of June of 1999 through late 2004.

MR. JAMES: When we did the renewal and the formation of the new entity, there was going to be the new owner, there was a component of local participation which I believe was the minority component of the new Urban Cable Works franchise.

COUNCILMAN NUTTER: So now your testimony would be that for 20 years, the existence of the Area II franchise, there has been either minority ownership or minority participation from the start?

MR. JAMES: That's correct.

COUNCILMAN NUTTER: Now, are there any outstanding compliance issues at the moment?

MR. JAMES: As I mentioned earlier, there is a compliance issue as it reads to the assumption agreement of 1999 of forming the Advisory Committee which, based upon all the discussions with the franchisee, that matter should be resolved shortly. Again, that is why there is a provision in this assumption agreement that within 90 days if there isn't any compliance, there will be full compliance on all aspects of the franchise on the 1999 assumption agreement.

COUNCILMAN NUTTER: And are there any outstanding issues with regard to the operation of the franchise or ensuring that the franchise is operated in accordance with the terms and conditions of the franchise agreement and what provisions exists to either ensure or guarantee that.

MR. JAMES: The franchisee is the new owners, Time Warner in our discussions did not provide a guarantee, a specific guarantee of the performance of the franchise because their corporate structure is somewhat different than the other franchisee here in Philadelphia, being Comcast. What we have discussed with them and what we believe is a mutual way of resolving this is the provision No. 2 which gives the City a stronger sense of the performance of the franchise --

COUNCILMAN NUTTER: Provision No. 2 of the --

MR. JAMES: Of the amendment. Which allows us to get a lot more specific details about their operating and capital investments from 1999 to 2004, as well as ongoing in the future we will have the kind of detailed information so that as we are reviewing their performance we have a sense of their past performance from a baseline and their success going forward and at least we know the amount of investments that are being put in the franchise to make the franchise successful.

COUNCILMAN NUTTER: What is it about the language in the proposed amendment No. 2 that ensures or, quote/unquote, guarantees the operation of the franchise?

MR. JAMES: In reading the amendment No. 2, there is no specific guarantee made in the franchise. I believe what you see in No. 2 is specific language that gives us the type of reporting mechanism that we who have to oversee the franchise have a stronger sense of their performance.

COUNCILMAN NUTTER: I hate to cut across you, but suppose similar to what your conditions were over the last five years that certain documents or reports were not being provided, what is the penalty in No. 2 for not providing same information that you're seeking to have access to in No. 2?

MR. JAMES: Well, the failure of the

reporting under Item No. 2 would be the liquidated provisions in Item No. 1.

COUNCILMAN NUTTER: And we're certain here that No. 1 is connected to No. 2 in a non-disputable fashion?

MR. JAMES: It is our opinion that it certainly does. The 15-year projections which were submitted in the original 1999 assumption agreement is the basis for the reporting mechanism that we're now asking them to provide the kind details in. That's why in Item No. 1 we have specific that assesses liquidated damages to non-performance of the 1999 assumption agreement.

COUNCILMAN NUTTER: How did you decide on the $250 per day? That's like a couple months on my cable bill.

MR. JAMES: Well, the $250 per day for not meeting that obligation is consistent with the $250 liquidated damage provisions that's already in the franchise agreement today for not submitting reports. So what we did is we tracked consistent language that we already have in our franchise agreements that require for reports that we would request is a $250 liquidated damage per day. This is consistent with that.

COUNCILMAN NUTTER: But for the consistency issue, would there be another figure?

MR. JAMES: I believe in the review of the franchise agreement, there is a $500 penalty -- and I'll have to find what category it refers to. And there's a thousand dollar penalty for certain categories. What we used was, again, the reporting because this was a report issue that we used the same.

COUNCILMAN NUTTER: And do I take it from y our testimony now that, having this proposed amendment, other documents that you have received, the opinion from the City is that the franchise is in compliance, you received all the documents that you feel are required or appropriate and everything has been satisfied or put forward in a satisfactory manner?

MR. JAMES: That's correct.

COUNCILMAN NUTTER: Thank you, Mr.

Chairman.

COUNCILMAN CLARKE: You're welcome, Councilman.

Mr. James, real briefly, with respect to the ownership interest both over the period time and currently as it relates to minority participation, beyond the actual ownership interest, are there any provisions or any goals as it relates to actual employment? Sometimes we have certain ownership interests that may be a minority but as it relates to the workforce and any other aspect of that company there may not be levels that people feel comfortable with. Not just on the minority ownership interest, on all the cable franchises.

MR. JAMES: In the cable franchise agreements have specific provisions that deal with local participation as far as suppliers, and it also deals with minority goals as far as hiring employees.

COUNCILMAN CLARKE: Who monitors that?

MR. JAMES: My staff does.

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COUNCILMAN CLARKE: Public Property.

MR. JAMES: Yes.

COUNCILMAN CLARKE: Do you utilize MBEC or Procurement?

MR. JAMES: We have a person who is assigned to receiving the reports that we get from the franchisees, and those reports are sent to MBEC for review.

COUNCILMAN CLARKE: So MBEC is involved in the process?

MR. JAMES: Yes.

COUNCILMAN CLARKE: Mr. James, I think you actually had to leave before a substantial part of the testimony. There was certain information requested by some of the participants in that hearing, particularly information requested from Time Warner and I believe also from Urban Cable. Is that information similar or all encompassing of the information that the City is required in order for us to proceed on this process, or is there additional information beyond that?

MR. JAMES: The level of details that are required under the FCC 394 filing allows the City to receive information about similar details to the information that the representative from PhilaComm was asking from the representatives from Time Warner, but it's not the kind of detail that we actually used entirely as a basis for making our determination. We are interested in the ownership interest. We are interested in the level of ownership interest and the participants who the interest. We're interesting in their ability to be able to financially meet the obligations of the franchise. I believe -- again I was not here for the entire hearing, but based upon the discussions that I've had, there was subsequent detailed information that the representative or the counsel from PhilaComm was asking from Time Warner which was not part of the submission that we were asking for. So there are certain things -- again, we wanted to stay within the guidelines of the federal guidelines as well as requirements under the franchise agreement for transfer issues.

COUNCILMAN CLARKE: Thank you.

Councilman Nutter.

COUNCILMAN NUTTER: Mr. James, in response to Councilman Clarke, you had indicated that there are other provisions of the franchise agreement dealing with issues of whether it's employment. Does that also cover contracting opportunities, whether it's service, supply -- what we would refer to in the government as service, supply, and equipment and those kinds of issues?

MR. JAMES: In the category, it does list the local opportunities for suppliers and opportunity for services.

COUNCILMAN NUTTER: Well, can you expound a little bit, I, guess on that if all documents have been received?

And I'm, quite honestly, quite intrigued by the prospect of the MBEC having some involvement in this.

What is the review process? What are the requirements? Are there goals? Are there certain standards? And what are they and what are the numbers.

MR. JAMES: Well, there are specific

goals in the franchise. There are specific percentage goals in those categories. I get that information before we conclude today, but there are specific goals. And in our franchising authority, we have a cable area manager and a cable area staff whose responsibility is to make sure we receive those reports, look at it for compliance with meeting its objectives, and that's why we share that information with MBEC so if they list an MBEC form there is a concurrence from MBEC that that firm that they listed is in fact an MBEC firm.

COUNCILMAN NUTTER: Do you know off the top of your head what the -- for instance, what the employment goals are, what the contracting goals or requirements?

MR. JAMES: Not off the top of my head. I have to look at that franchise agreement.

COUNCILMAN NUTTER: But in the course of this hearing, you could not only get that information, but also, say, for instance, the last year or so of reports that would show what the actuals are.

MR. JAMES: Yes.

COUNCILMAN NUTTER: Thank you, Mr. Chairman.

COUNCILMAN CLARE: Thank you, Councilman.

Any other questions of this witness?

(No response.)

COUNCILMAN CLARKE: Thank you very much for your testimony. Thank you, Mr. James.

I would like to have the representatives of PhilaComm Cable Group.

MR. DEBUNDA: Good afternoon, Councilman. I have given to the Clerk a folder containing some of the things you may refer to here for ease of referral.

COUNCILMAN CLARKE: Hold on a second, sir.

(Pause.)

COUNCILMAN CLARKE: Could you please state your name.

MR. DEBUNDA: Good afternoon, Councilman Clarke and other Members of the

City Council. My name is Sal DeBunda, I'm an attorney with Pelino & Lentz in Philadelphia. I'm here representing PhilaComm. Here with me is Willy Johnson who is a shareholder in PhilaComm, Bruce Crawley who is a shareholder in PhilaComm and Steve Pressman who is an accountant that we've hired to look at some of the books and records here.

I've given you a folder of pertinent documents that we're going to refer to, not all of which, but I would ask that these documents be put into the record of the Committee. I've given copies to the Clerk.

COUNCILMAN CLARKE: So we won't have to review the entire document?

MR. DEBUNDA: That's correct.

COUNCILMAN CLARKE: Thank you so much.

MR. DEBUNDA: I would like to start off, if I may, to indicate, as I said, I am representing the PhilaComm, but I thought it would be helpful for the Committee to know who PhilaComm is. So I'd like to just go quickly down the short list owners of PhilaComm, some of which are present sitting here and up at the table. There's Freeda Med who is vice president of marketing for West Insurance; Joanne Bell who is vice president and a member of the board of WES Management; there's Emmit Chapell who's president of Altroy International who's had other capacities here in the City. There's Valerie Clark who is president of the American Baptist Extension Corporation. There's Bruce Crawley who's the president of Crawley, Haskins and Sloan. There's Willy Johnson who is the Chairman and CEO of PRW Services, Inc. There's Witney Kernodle, Esquire, the daughter of Obra Kernodle who is with his office. There's Cheryl McKissock Felder who is president and CEO of McKissock & McKissock. There's Eugene Newton, M.D., who's president and chairman of Urban Health Systems. Carl Singley, Esquire, from Blank Rome. And Lawrence Jarrett who's vice president of public Government and Community Affairs for Urban Cable Works of Philadelphia.

COUNCILMAN CLARKE: Very impressive

group.

MR. DEBUNDA: I want to state that, for reasons I'm go to go explain later, we are here at this time, unfortunately, to still oppose the transfer. I'll get into that in more detail. I want to get some things out of the way, if I may, so I would like to start off by asking Mr. Johnson to give a brief statement.

If you turn to Tab 19 of the materials -- I'm not sure if he's going to read his statement. It's there for your perusal and record.

Mr. Johnson, you may want to make some comments.

MR. JOHNSON: Good afternoon, Mr. Chairman and Members of the Committee.

COUNCILMAN CLARKE: Mr. Johnson, for the record, just please read your name into the record.

MR. JOHNSON: My name is Willy F. Johnson and I have served as the chairman and president of the PhilaComm group.

Basically, the statement that we're

introducing into the record gives some of the background of how PhilaComm Cable came together and its relationship between Time Warner and Inner City Broadcasting.

Without laboring you with all of the information, it is here. I would like to relate to some comments that were made by, I think, the counsel for Inner City ascribing certain things to me as President of the group, with your indulgence.

Counsel of Inner City have ascribed several comments to me in is correspondence to the Honorable Michael A. Nutter on February 4, 2005, and to the Honorable Darrell L. Clarke on February 10, 2005, which I would like to address. Counsel has commented that without the loan of its investment, PhilaComm would not have been able to participate in the franchise, and further, that no member of PhilaComm contributed money or put assets at risk. Counsel has further stated that Inner City was assured by me the loan would be paid off early but that PhilaComm could not pre-pay the loan because it was unable to secure financing on terms more favorable than Inner City's loan.

My response to these comments is as follows:

First, that Inner City's participation in the venture resulted only from PhilaComm's invitation. We invited Inner City to come and partner with us in an effort to have substantial minority participation in the Area II franchise. And the indication that we did not put up anything when we're the one who brought opportunity to the table, we believe is incorrect.

Second, PhilaComm put its entire investment at risk, namely, the value of the interest we held in the franchise when we pledged our interest as collateral for our loan.

Third, that although I have no specific recollection of stating that the loan will be pre-paid, I do know that PhilaComm intended to refinance its purchase money loan with a bank loan on more favorable terms than the 15 percent rate charged to us by our partner and that based on Time Warner's own financial projections of the value of the franchise, we expected that cash flows would have allowed us to go through a favorable refinancing. When we approached First Union, which is now Wachovia seeking to refinance the loan, we were turned down because under Time Warner's management, the franchise had poorly performed and was in default of its financial covenants of the original bank financing which materially impacted on our investment and made it impossible for us to refinance the loan.

Counsel further stated in his correspondence to the Councilmembers that PhilaComm is now victimizing Inner City because we seek something for nothing. Certainly, we were lead to believe that based on Time Warner's own owes projections at the time of our initial investment we would achieve a reasonable return on our $6.4 investment. We believe that Inner City also expected a reasonable return on their investment. PhilaComm's investment has been put at risk by Time Warner management and we seek now to understand how and why that happened and to clarify the various payments, loans and settlements which are proposed to be made by Time Warner to our partner Inner City in connection with the sale. We are particularly interested in clarifying the payments because our partners advise us that not only will PhilaComm receive a zero return on its investment, but that PhilaComm would be left, should Council approve a transfer, with a deficit where we'll be owing our partners.

Finally, counsel for Inner City comments to Councilmen Clarke and Nutter that although PhilaComm previously rejected its suggestion that we continue as a partner with Time Warner in Area II franchise after the sale, we now seek to continue as a minority partner. We are not in favor of exiting the franchise, but we understand we will be required to exit the franchise because our investment was tied to Inner City's. Our exit was tied to their exit. Moreover, PhilaComm understood then any continued investment will be based on the status quo performance and management of the franchise. In fact, PhilaComm has a continued interest in minority participation in an improved Area II franchise, assuming that Time Warner would agree to take the steps necessary to enhance the operations and management of the franchise and address the issues of subscribers' dissatisfaction and community relations.

Thank you.

COUNCILMAN CLARKE: You can continue.

MR. DEBUNDA: As I'm going to report, since last time, we've received a substantial amount of documentation from counsel of Inner City and from Time Warner. There's a short list of documents we have not yet received, which I'm talk about in a few minutes. Bit of the documents we received, we hired an accounting firm, Pressman Ciocca & Smith, whose resume is behind Binder Tab 2, and we've asked them to look at the documents and we have a short report on what he found in there which I think would be of interest to this Committee. I won't read you the whole resume, but I will tell you that he is the outside accountants for Lenfest Group which has been a significant cable operator in the United States since 1976. And it merged with Comcast about a few years ago. So he does has the background in cable television as well as accounting. If you look behind Tab 3 of the binder I've given you, you'll see the reports that we're referring to.

MR. PRESSMAN: I'm name is Steve Pressman. I'm a managing general partner of Pressman, Ciocca, Smith.

Some of the original documentation that we looked at was the closing binder for the original settlement. AND on January 11, 2000, on the formation of Urban Cable Works of Pennsylvania, we attempted to put together a sources and uses of funds upon that formation.

COUNCILMAN NUTTER: Mr. Chairman. I'm sorry. Mr. Pressman could you bring that microphone a little closer or point it down?

MR. PRESSMAN: Okay.

COUNCILMAN NUTTER: And do you have anything written?

MR. DEBUNDA: All the stuff he's going to talk about in behind Tab 3, but there's not a statement.

COUNCILMAN NUTTER: I understand.

MR. PRESSMAN: The sources of funds to form Urban Cable Works of Pennsylvania came about from two capital contributions. One was from City Cable Works which contributed $18,520,000 and PhilaComm which contributed $6,480, 000. In addition to the two capital contributions, there were loans from PNC and PNC-related entities of $10 million which amounted to a total of $35,050,000. The uses of the funds was the initial capital contribution into the newly formed entity of Urban Cable Works of Philadelphia which amounted to $32,400,000. There was a $200,000 financing fee. And we're at loss because of lack of documentation to account for an additional $2,450,000 upon the formation of Urban Cable Works.

In addition to that, Urban Cable Works was split between the two partners in 80 percent and 20 percent capital contributions between City Cable Works and PhilaComm. And when you look at the mathematical contribution of each, it actually works out to be a capital contribution of 74 percent for City Cable Works and close to 26 percent for PhilaComm. And also in the documentation, there's not an explanation as far as the difference in the opening capital percentages.

MR. DEBUNDA: If I may comment, what Steve is saying is that we paid 26 percent of the equity and got 20 percent of the investment.

MR. PRESSMAN: The next page is a similar document, but this is the sources and uses fund on the formation of Urban Cable Works of Philadelphia and Urban Cable Works was formed by 32,400,000 capital contribution of Urban Cable Works. There was debt that the new entity borrowed at the formation at roughly $108 million. There was a cash purchase for the system from Wade of 126 million in a addition to a note repayment and financing cost of 14,800,000. The effective price for 100 percent of the system was roughly $162 million.

MR. DEBUNDA: Again, if I may comment here, the point that we want to make is they indicated in previous testimony that the purchase price for the Inner City portion was $87 million. They in effect, as we read this, paid $160,000 for the entire thing so that in effect 60 percent would be like $96 million and here we are sitting five years later and they're selling it for less than they paid for it according to the --

MR. PRESSMAN: Substantially less.

MR. DEBUNDA: Substantially less than they paid for it, according to the information we have here.

MR. PRESSMAN: The next sheet is just a document detailing the basic number subscribers for each of the years of operation from inception through 2004. The initial number of subscribers reported in the system, approximately 67,786. And then going through the years and ending up basically at the current time at 50,000 subscribers. There was a 26 percent decrease in the five years of operation.

MR. DEBUNDA: If I may interject again. I'm sorry.

That's 30 percent penetration rate. We have a chart that you'll see later that shows penetration rates on the average throughout the country in the 40 to 45 percent range. This system is operating today at about a 31 percent penetration rate. That means that more than two-thirds of the homes past are not subscribing to cable in Area II.

MR. PRESSMAN: The next sheet details our the related party transactions with Time Warner.

COUNCILMAN CLARKE: In the other areas, you said 32 percent?

MR. PRESSMAN: Average penetration usually is running in an urban area of about 45 to 50 percent.

COUNCILMAN CLARKE: Thank you.

MR. PRESSMAN: The related party transactions with Time Warner we detailed out, again, through inception of this system through the year 2003 which was the last audited financial statement. Time Warner received various fees associated with the system. They were the manager of the system and received 4 1/2 percent of the total revenues of the system and that your cable management fees, that's the first line detailed out. The second line is programming and promotional services. Time warner sold to the system programing services that they received. And, again, not enough information is detailed whether Time Warner had any type of profit built into the re-selling of the programing or they sold it at their discounted cost. And then there's some small revenue that was generated between inner companies.

All tolled over that four-year period, there was a little bit over $29 million that Time Warner charged the system for the related party transactions.

Next sheet is just a summary, again, for that same four-year period where we had the audited financial statements of the operating cash flow. And operating cash flow is really the key line for a cable system. If you think about a typical operating company, you're looking at net income -- this is pretty much the equivalent, but you're adding back any interest depreciation or amortization. And cable companies when you're looking at operating efficiencies, you're looking at operating cash flow as the percentage of revenues.

And in spite of the fact that the revenues increased from 2000 to 2003, the operating cash flow either before management fees or after management fees each year decreased. They started out at 18 million, and they decreased down to 14 million at the end of 2003. And the operating cash flow after management fees is a percentage of revenue again decreased from 46 percent all the down to under 30 percent. And typically, in a well-run efficient cable system, you will see operating cash as a percentage of revenue at 40 to 45 percent.

The next sheet details out just the actual operating cash flow versus the projected operating cash flow. Again, in the closing binder, Time Warner prepared a projected cash flow through the year 2003, and we simply took the actual numbers and then compared them to the projected numbers, and unfortunately for the owners for the system, the numbers were not even close. The actual numbers were not close to projections. The projections had increase in cash flow every year starting from 19 and a half million dollars all the way up to after management fees of $28 million. Unfortunately, the historical numbers went just the opposite direction. They started at 18 million and dropped down to a little bit under $14 million. And in the last year that we have the full audited financial statements 2003, the difference between historical numbers and projected numbers was a deficit over $14 million.

MR. DEBUNDA: If I may interject again. The significance here is that if you generate the cash flow you're supposed to, it makes the system more valuable. Two, it generates the extra cash flow to pay down your debt. The inability to meet the projections here lowered the value of the system and also continue to make it that even more expensive because you weren't able to pay it off. Just for an example, in the year 2003 -- this is their projection, not our number. They projected over $31 million of cash flow before management fees. They, in fact, did $16 million of cash flow. That's a difference of $15 million. As a 20 percent owner of part of that, that was a $3 million hit in that year alone to our situation. This is the situation where their own projections, they're coming in at almost -- 50 percent of their projections as the same company that made the projections has been operating it during that time.

And the next sheet is part of a three-page summary in terms much what's been proposed, if you look at the second sheet in that section. In terms of the proposed sale at the current time, sales price is $87 million. There is an existing debt to PNC outstanding of $23 million, which leaves the net of 63 million. And PhilaComm as a 20 percent owner would be entitled to 12,725,000. Unfortunately for PhilaComm, they have a note outstanding to Urban Cable Works of Philadelphia, Inc., and this is the 15 percent note compounded on a semi-annual basis that's already been produced in the record and there's an outstanding balance there of 13 million, so they're actually underwater where PhilaComm members would have to come up out of pocket for $630,000. If we were simply to look at the projections that Time Warner prepared at the inception of this system and reflect a sale price from those projections -- and again, it's their own projections -- we would end us up with the sale price of 127 million less the note outstanding PNC, less the note outstanding Urban Works, and would a profit of almost 7 1/2 million dollars. So you have an $8 million swing in terms of historical numbers was actually there and what was projected to be three at this point in time.

COUNCILMAN CLARKE: Okay.

MR. DEBUNDA: I just want to point to a couple other things that are in that. Just a few pages beyond that, there's a report prepared that I've asked the Pressman firm to prepare which shows what the return on investment, what it was to both City Cable Works and PhilaComm. If you loot at proposed 80/20 split, which is the documented split, they would have gotten 22.41 return on their investment, and we would have gotten a 14.45 percent return on investment. Unfortunately, the note was at 15 percent, so that accounts for our negative situation here. But City Cable Works would end up with 22 percent return on their investment during that same period.

Just go to the last sheet, I want to read to you from the 10-Q which has been filed by Time Warner. Let me tell you what tab that is. The 10-Q indicated that -- I couldn't find it; it's not in the folder. Sorry.

The 10-Q indicated that the consideration paid here was not the 53 million and the 34 million, but that it was the following: It was the $34 million settlement agreement that they signed. It was a $53 million price for the system itself. The forgiveness of $66 million that they owed to Time Warner. So they're basically saying, you owe us 66 million; we're going to make that go away as part of this deal. And also, you owe $55 million to other people; we're going to assume that debt. So in effect they paid them 34, plus 53, plus 66, plus 55; the last two being either forgiveness of indebtedness or assumption of debt. So in effect they paid them $208 million for this system, not $87 million.

Councilman Clarke, I'm sure if you and I were doing a transaction and you owed me money and I forgave it, you would consider that as part of the consideration you received, not just the cash that I gave you. So in effect, the report here that the transaction involves an $87 million transaction is, in my opinion, not correct. It's actually a $280 million transaction, but a lot of it is forgiveness of a debt or assumption of debt.

The other thing that's interesting here is in the same document where they are bind the interest, they agree to lend $8 million to them after the fact. Now, the reason I mention all this, both the 66 and the 55 and the 80 million, they're not proposing to give us any of that. They're saying the deal is $87 million and they calculated the interest to us based on the 87 million, not on the price that is being paid.

MR. PRESSMAN: If I can just add, even with the 87 million, we've been asking for documentation about specific components of that, and we have not been provided that type of documentation.

MR. DEBUNDA: As I mentioned earlier, there's a short list of things we haven't gotten, and that's one of the reasons we still are not able to decide on this issue. I'm going to quickly just go through them. It's not a long list. They keep referring to a settlement agreement that involved $34 million. This was paid by Time Warner to

Urban Cable Works. We are 20 percent partners in that company. We have asked for a copy of that settlement agreement. And Mr. Holder in his letter indicated to us he wasn't sure he could give it to us because it might be under a confidentiality agreement between Time Warner and Inner City. I've asked him whether or not he asked Time Warner for permission to give us that, and he has indicated -- I've not gotten a response that he did. He also indicated that he might need a confidentiality agreement from us to give it to us, and I told him we would give it to him. So at this point, there's a $34 million settlement which is, they are saying, part of our consideration which they will not give us a copy of. For whatever reason I cannot figure out. So we don't have that document. We don't know what's in there

The second thing is there's a $23 million payoff to PNC off the $87 million. We did the math on what the interest rate was, and that comes out to $17 million. So there's a $5 million shortfall we don't know what accounts for it. We have asked them to give us that documentation. Mr. Holder's response to me was basically, "Well, if we had closed the deal, you would have it already." My answer is, I'd like to have it before I comment, not after the fact. Now, Willy Johnson was told that the reason they were paying off PNC that quickly was to avoid having to give them payment on a warrant they had for 11 percent of the system. So if it wasn't for the warrant and it wasn't for the interest, we don't know what it was for. And we've asked for information on that because that $5 million, again, 20 percent of that has an impact on us. That's another million dollars that we don't have any information. We have not, unfortunately, Councilman Clarke been able to get that information.

The other thing -- and this may seem silly.

COUNCILMAN CLARKE: This is City Council; nothing is silly here.

MR. DEBUNDA: You have probably seen correspondence where we have asked to see the original of the note.

COUNCILMAN NUTTER: The original of what?

MR. DEBUNDA: Of the promissory note that our client signed. I'm giving you the copy that we got from Mr. Holder. This is what they say is the best copy of the note. If you turn to the last page, you'll see a signature there. This piece of paper is not just a piece of paper. This is a $13 million piece of paper. It's based on this document that they say that we owe them $13 million.

Can anybody tell me whose signature that is?

We have asked to see the original of that document so we can figure that out. I don't believe that's silly. We have a guess they tried to suggest who it might be, but this is the best copy.

COUNCILMAN CLARKE: All these pages are copied from the same document?

MR. DEBUNDA: Yes. You see how clear the other pages are compared to this page? You noticed that too.

So that's what we've asked for, and we have not gotten a response. But this is not just a piece of paper we want for our file, this is the basis on which they say we owe them $13 million. And we've asked to not get a copy of the original but to have the original to inspect it. And we have not been able to get that.

So I guess to summarize, we've asked for the settlement agreement, we've asked for the payoff on PNC, we've asked to see a copy of this and we've also asked for financials for the holding company, the company that owns Philadelphia Cable Works. We have not gotten those. Everything else we have gotten. We've gotten thousands of pages. A lot of it is not relevant, some of it is relevant. We have not gotten those documents, but they impact our situation and make it difficult for us to reach a financial conclusion about this. So I just want to point out we still are asking for those if we can.

I would like now to as Bruce Crawley to make some remarks. A copy of his statement is also in the materials we gave you behind -- I think it's Tab 19.

MR. CRAWLEY: Mr. Chairman, Councilman Nutter, and Councilman Rizzo over in the corner, good afternoon. My name is Bruce Crawley. I'm here as a private business owner and a partner in the PhilaComm Cable Group, a company formed here in 1999. PhilaComm was established in direct response to City Council's interest in ensuring that there would be a continuing minority ownership presence in the City's Area II cable franchise.

As you are aware, there are now four cable franchises in the City of Philadelphia, three of them are owned in their entirety by Comcast, and none of those have minority equity participation.

When there was expressed interest in continuing the minority ownership presence in Area II, our partnership took steps to purchase a significant portion of what had grown to become a substantial local cable property. To assist us in generating the required capital and operating management talent, we reached out to the African-American-owned, New York City-based Inner City Broadcasting Corp. and invited them to participate with us as a minority partner. The resulting ownership structures are Time Warner as a 40 percent owner, Inner City as a 60 percent owner, with PhilaComm holding 12 percent of Inner City's 60. It should also be noted that Time Warner's cable operation itself is owned 17.9 percent by Comcast.

Effectively, we were the local owners and equity position we gained by way of a $6.4 million investment. And Time Warner, in connection with Inner City, was responsible for the daily operating management. You should also note that there would be no need for discussion of franchise transfer, no need for any of these related discussions had Inner City not decided to withdraw from Philadelphia, to sell its ownership stake to Time Warner and simultaneously attempt to terminate our partnership under onerous conditions.

My mission this afternoon is to provide you with a clear understanding of the depth of the continuing commitment by PhilaComm to remain as an equity participant in the Area II franchise. I will also encourage you to withhold your approval of the transfer until you can be assured that Inner CITY and Time Warner have done all they were required to do to be responsive to the City of Philadelphia and to the cable subscribers in Area II. We also want to ensure that Inner City and Time Warner will not be able to provide what is arguably then the nation's worst customer service and cable management inefficiency for four years and be handsomely rewarded for doing so.

We, the members of PhilaComm, are business certainly business people and we saw the Area II franchise as a way of providing a high quality customer service at a reasonable profit. Neither of those outcomes were achieved. What actually transpired under the Inner City Time Warner management team was extraordinarily poor customer service, a decline in subscriber levels from nearly 68,000 to 50,000, as you've heard, over a four-year period; continuing demands for fee increases from Time Warner; parential misbudgets and subscriber penetration rates and operating inefficiencies that ranked the management of Urban Cable Works at the bottom of virtually every national listing of cable performance.

I think you heard the number for penetration. And if you look at that penetration number, you saw that it fell well below the average penetration. But what was not pointed out that if you rank the 50 largest cable operations in the country, only two of them had a worse penetration rate than Urban Cable Works under Time Warner Inner City management.

Perhaps the most distasteful aspect of the entire relationship has been the constant complaints by friends and neighbors here in Philadelphia who assumed that because we owned a small stake in Urban Cable Works that we somehow had the ability to improve what had grown to become a disastrous customer service record.

Now, we all know that cable companies often suffer in the area of customer service reputation. In fact, a recent University of Michigan American Consumer Satisfaction Survey found that the cable industry overall ranked near the very bottom, even lower than the IRS. But in an industry that has always suffered from a less than stellar customer service reputation, Urban Cable Works under the Inner City Time Warner management has clearly earned what is the worst cable service customer satisfaction record in Philadelphia. Many of us have heard horror stories of Urban Cable Works Subscribers in North and West Philadelphia who when required to move their residence out of Area II have bemoaned leaving their old neighborhood but have been absolutely delighted to have an opportunity to escape from Area II and from Urban Cable Works.

You should know that we at PhilaComm have not taken the numerous anecdotal subscriber complaints lightly. We have sent formal complaints to Inner City board meetings. We've had numerous discussions with local operating managers. We pushed for the removal of service-related executives in local office who had not performed and invited their representatives to Philadelphia for evening meetings to explain our operating and customer service frustrations and to plead the case for the Urban Cable Works subscribers.

It is clear to us and to our subscribers that our complaints fell on deaf ears and that Inner City regrettably had an entirely different agenda for its investment; one that did not involve being responsible to City of Philadelphia or to the City's routine requests for information and one that didn't include a commitment to customer service. In fact, Time Warner inner City ignored our repeated suggestions that Urban Cable Works establish a community advisory board to serve as a liaison between the community and the franchise for customer service, for corporate citizenship and for other issues.

We've heard earlier in the presentation by Mr. James that they've now agreed that they will have a customer advisory board, but this is upon their proposed exit from the City of Philadelphia. You should know that the proposed names, list of people who can serve on the advisory board was submitted in the year 2000, and we constantly inquired about why they were dragging their feet in that regard. I would think that if we had a customer advisory board in place, we wouldn't have to have these various subscribers running around in frustration wondering why they're not getting the same kind of service that people in Areas I, III, and Iv are routine accustomed to receiving.

As a result, the substantial minority subscriber base in Area II were left, as we have stated, with some of the nation's most unresponsive, non-customer-friendly, ineffectively managed cable service in the country. We have resented that behavior, and we certainly want to remain as a constant presence in Area II even after Inner City leaves to assist in repairing that dismal track record. Even despite our own fundamental disagreement with their proposed terms for exiting their agreement with PhilaComm, we don't believe Inner City's track record here and its callous disregard for the executive and legislative branches of this government to be rewarded by extraordinary accommodations that they have demanded.

We trust you agree and that you will require them to be fully engaged in responsiveness to simple business courtesy and to fairness before you approve this transfer. The City's local minority investors and Area II's 50,000 subscribers deserve no less.

Thank you very much.

COUNCILMAN CLARKE: Thank you, Mr. Crawley.

MR. DEBUNDA: If you look at Tabs 15, 16 and 17 of our booklet, you'll see that there were meetings involving Inner City and PhilaComm in which even the representatives of Inner City raised concerns about the way that Time Warner was operating the system.

If you look behind Tab 15, you'll see a meeting of the Urban Cable Works of Pennsylvania. There's another meeting behind Tab 16 which talks about their performance and the way that they were handling things, including bad debt. And behind Tab 17 is additional correspondence that we had showing our concern that we had at that time.

What I would like to do now in closing -- I've taken a lot of your time -- is kind of summarize what I think we have here and why we're in the situation that we have. We believe that the operation of the system has had a negative impact on the City and Area II subscribers. In looking through the paperwork, we did receive a pattern of failure by Time Warner and Inner City to comply with the reporting requirements under the original franchise agreement and again under the assumption agreement. The fact that they're now saying they're going to do that is at a time when they need something from you, but certainly the history has not been there that they have given you that information.

We believe that there's been a failure by Time Warner Inner City to meet the City's requirements concerning liaison despite requests by our client to do that.

There's been a shrinking penetration of 26 percent. That means that 17,000 less people are now subscribing than five years ago. That's a hell of a way to run a business, in my opinion.

This is producing less service to the residents of this City and also important less revenue to this City. You get a percentage of the revenue. So less people are subscribing, you get less revenue.

There's been problems with connection completions, disconnections and continued dissatisfaction of the Area II subscribers there's been failure by Time Warner to clarify the involvement of Comcast in the franchise. They have stated that Comcast is not involved in this, but if you read their 10-Q, you'll see information that they have continuing connection with Comcast. Comcast owns 17-some percent of Time Warner's cable operations. They have shown a history of transferring recently 90,000 subscribers to lower Comcast percentage of ownership, so there is a history of them doing that. I have no proof that Comcast is involved here, but I'm not sure that they totally clarified even to our -- following the last meeting, I specifically asked Time Warner to discuss with us a continuing minority participation. Mr. Fogarty responded to me that they would consider a proposal from us about that but not until after this approval was granted, not before and not until after a joint proposal by them and Comcast to acquire the Adelphia system had than resolved. So they have basically said to us that they would not at this point talk to us about a continuing involvement until those conditions are met. And they have repeated that response even today when I spoke to them.

I think there's also been a negative impact on the local partner in addition to the City and its subscribers. They have not provided us with still some information that we need. They have not shown that they're willing to respond to concerns that we have about their operations and their participation in the City. If they had only met their projections, we wouldn't be having this discussion, in my opinion. But they have failed to satisfy us as to why they didn't. And we also believe that they have not correct certain accounting irregularities which we found in their documents regarding bad debt, recognition of revenues and write down of assets.

The last thing is that we believe there should be a continuing minority participation. We would like to be that minority participation. We don't seem to be able to get anywhere with that at this point. There's also a serious question as to the total consideration received. Is it $87 million? Is it $208 million, or what it is? But based on all of that, in our feelings about the impact on the City, on the impact of the local investor and its subscribers, we unfortunately at this point have to still come out negative in terms of the request for the transfer of this franchise.

I thank you for your time and will be willing to answer any questions that you have.

COUNCILMAN CLARKE: Thank you for your testimony.

Councilman Nutter.

COUNCILMAN NUTTER: Mr. DeBunda and Mr. Johnson and Mr. Crawley and Mr. Pressman, I appreciate very deeply the information and, if not, the education you've provided to us on the record with an extensive document, the materials that you have received and your analysis of them.

If I could ask -- and you'll decide amongst yourselves who will respond. But in a series of sentences or a paragraph, what is it that the local group, more formally known as PhilaComm, if you could lay out what's your goal at this point?

MR. DEBUNDA: Our goal has always been to be an investor in this franchise, Councilman Nutter. How we would like to accomplish that at this point is to exit sufficiently for what our investment we think should be worth up to this point, because they're getting consideration, and then take some of that consideration and invest as a continuing investor in the Time Warner franchise here in Area II.

COUNCILMAN NUTTER: Can you make any comment with regard to attempts to convey that message or desire and, to the extent that you're comfortable, share any information with regard to where that kind of proposal stands at this point?

MR. DEBUNDA: I have communicated to both Mr. Holder and Mr. Fogarty our desire to do what I just outlined. There has been discussion just recently about exiting from our current investment in Inner City. Those are still settlement discussions and I would, therefore, not like to go public with those; but there has been discussion there.

With respect to Time Warner, I would indicate that we have not even that progress. There's been a statement to us that they would consider a proposal for us with no commitment or any percentages being talked only after this request has been approved and only after the joint proposal with Comcast to buy the Adelphia system is completed. We have made no prognosis with Time Warner, in my opinion, at this point in having any concrete discussions about continuing as a minority participant.

COUNCILMAN NUTTER: Based on all the information that you have and based on the testimony that was received earlier from the City, if this transaction were to proceed as it is presently structured, from your perspective or any of the investors or local group members, would that put the City in a position where the division from the 20 years ago and the goals of minority ownership or participation, given the demographics of the franchise area, would we now be in a potential situation where the Area II franchise for the first time in apparently its history would have no minority ownership or participation?

MR. CRAWLEY: That is absolutely the case, in our opinion, Councilman. That would leave Philadelphia, a City with 43 percent African-American population, about 10 percent Hispanic population, about 3 percent Asian population with absolutely no minority cable ownership participation. And I think it's even more significant than it was 20 year ago, Councilman, because 20 years ago we were talking about the cable business only a conduit for providing some form of telecommunication services. Today, the cable companies are also providing Internet services and Internet access, and it is critically important for our communities, the communities that have been served in Area II and other minorities communities across the City that there be some policy input and some ownership input at the level of Internet access in the City. That wasn't a consideration earlier, but the evolution of this industry has caused them to be leaders in the provision of those services.

COUNCILMAN NUTTER: Okay. Thank you.

Mr. Chairman, I'm finished at the

moment.

COUNCILMAN RIZZO: Is this panel finished? Is that it?

MR. DEBUNDA: Yes.

COUNCILMAN RIZZO: Who would be the appropriate person to ask this question of? You talk about customers leaving a system. What impact has satellite television had on the cable business?

MR. DEBUNDA: First of all, the penetration rates they were giving you for a national average and for local averages are already after the impact. If you look at -- I think it's Tab 5. Yes, Tab 5, you'll see that the national average for penetration of subscribers is whole country is 52.8 percent. The penetration rate for Urban Cable Works is 31 percent. All of those are affected by the same competitive situations. So we're basically operating at 60 percent of the national average of cable penetration in Area II. If you look up that list, it shows you which one is higher or lower. I think there's only two or three that are lower than this penetration rate here in Area II.

I do not -- you can ask maybe the City to provide it. I don't know what Comcast penetration rates are in the other three areas. They probably have it; I don't. You may want to ask that question, but I would guess that it's significantly lower than their penetration rates in the same competitive environment, Councilman.

COUNCILMAN NUTTER: For the record, Councilman, I think it's interesting to note on that chart the two areas that are lower appear to be Chicago, what's called Area IV, I have no idea where that is, the cable operator is Comcast; and Los Angeles, South Central, and that operator is Comcast also. And those are at 25.7 and 24.2, respectively.

COUNCILMAN RIZZO: Thank you.

The next panel will be Time Warner and Inner City.

MR. HOLDER: Good afternoon, Councilman. My name is Eric Holder. I represent, along with my colleague Gerald Waldron, Inner City in this matter, Urban

Cable Works.

Councilman, we don't have prepared remarks. The testimony that we wanted to put on the record we made a part of the record, I guess, at the last hearing. I would only note that in comment that with regard to the concerns raised by the panel of the folks representing PhilaComm, and with all due respect, the comments are and the concerns are essentially beside the point. The purpose of this hearing is to look at the suitability of Time Warner to run the proposed franchise, and I'll ask Mr. Waldron to be allowed to detail more specifically what the concerns of the applicable statutes are. The thrust of what they spoke about is based on a private dispute between PhilaComm and Inner City. With regard to that dispute, that is something that is, as I said, private, something that I think will ultimately be worked out. But it is not appropriately the subject of the hearing for which we've all gathered day.

With that, I would ask Mr. Waldron be allowed to simply go through very quickly --

COUNCILMAN NUTTER: Point of information. I'm sorry, Mr. Holder.

COUNCILMAN RIZZO: Point of information.

COUNCILMAN NUTTER: Thank you, Mr. Chairman.

Mr. Holder, could you say what you just said again, please, the last part of what you said? I apologize.

MR. HOLDER: I was essentially saying that the purpose of this hearing is to look at the suitability of Time Warner as the operator of the proposed franchise in Area II. Much of what the representatives of PhilaComm spoke about during their panel's presentation dealt with a dispute, a private dispute, between PhilaComm and Inner City that we did not feel is appropriately a part of this hearing.

COUNCILMAN NUTTER: I heard that part. You said something about parties working something out, I thought I heard you say.

MR. HOLDER: That's really just an opinion on my part. As Mr. DeBunda indicated, without getting into any details, we have had some settlement conversations. I actually think that there will be worked out. That's just my opinion. I don't know if that opinion will be proved to be an accurate one or not.

COUNCILMAN NUTTER: Will, let me at least offer this in response. And I know you're probably not finished. But as views and opinions go, and you are a well-known, highly-regarded, significantly-talented attorney; and I, of course, am not, so I'm at an immediate disadvantage to you. But, I would only suggest that when you raise the issue that these hearings are for the purpose of determining suitability of the franchise operator or proposed operator to run a franchise here in Philadelphia, I would only submit to you that many of the issues that we've heard, whether at the first hearing or at today's hearing, go directly to the issue of suitability. The testimony that's been presented, the document that has been put forward, I believe, raises a significant amount of concern with regard to the suitability issue of franchise operation. I'd certainly like to hear more about penetration rates, operational performance and those kinds of issues. I think that they are all criteria that are a part of anyone's evaluation process on suitability, whether it is the representatives from the Public Property Department or the Law Department. And then, of course, I believe or I would take the position that a legislative body has an even wider range of view, opinion, fact, data, information that all go into anyone's decision-making process as it relates to suitability to operate a franchise.

So I understand that we're all familiar with federal regulations and guidelines and statutes and the like, but in terms of what this body does, all of the information that's been put forward, I think, factors into the issues of suitability because there are any number of very serious and valid concerns about the operation of the franchise, at least based on the information. So I would at least suggest let us not so summarily dismiss the issues that have been raised and at least deal with them in this public hearing and in this public forum as you are now sitting in a City Council public hearing. They cannot brushed away as immaterial or they don't matter or they're not for you or you can't think about them or you can't take them into consideration as you represent people and interests here in the Philadelphia. I think we should at least agree to that.

MR. HOLDER: Well, Councilman, I was very clear in the language that I used. I said much of what they talked about; I didn't say everything that they said was not appropriate. But what I'd like to do, if we could, as I indicated before is maybe have Mr. Waldron just go through very briefly from our perspective what we think is appropriate to be heard during the course of these hearings.

MR. WALDRON: Members of the Committee, Councilman Nutter, I'm Gerald Waldron, along with Eric Holder, represent

Inner City.

Councilman Nutter, addressing your point, suitability is the question of the operator is the question that is before the franchising authority. The Federal Communications Act guides and limits the Council's action. As Councilman Nutter acknowledged here and acknowledged at the last hearing, that is the framework under which this franchising authority proceeds. The Federal Communications Commission has adopted Rules implementing that statutory provision, has adopted a form which gathers information which is then submitted to the City. And the focus of that information, the focus of the application and the focus of this Committee's question is on the qualifications of the transferee. And I'm just quoting from the FCC, "Local franchise authorities are permitted" --

COUNCILMAN NUTTER: What's the cite, Mr. Waldron.

MR. WALDRON: I'll give it to yo when I'm done. "Are permitted to request additional information they deem reasonably necessary to determine the qualifications of the assignee or transferee." That's 10 FCCR 4654, 1995.

And as Mr. Holder just said, the extent to which there are questions about how the operations have been run, how the penetration levels, those are fair questions for Time Warner. I do note that Mr. DeBunda said "I'm not sure that they're suitable" and then he said "I would like to be part of the future operations." So perhaps it was a mixed message that we heard from Mr. DeBunda and company.

But the point is that the amount of money that investors received from it, that's what we heard from the last hearing. Those are questions which were asked today. In interest of cooperation and in the interest of comity, we have tried to respond. I do note that Mr. James earlier said that the staff was careful to stay within the guidelines, and he was referring to the FCC guidelines which speak to the requirements and the qualifications of the transferee.

Lastly, I note it is always tempting for third parties to try to bring in collateral issues in a transfer process. This, frankly, is a familiar problem that the Federal Communications Commission deals with frequently. Here is what the FCC said -- and I will give you the cite at the end. Here is what the FCC said on this very question: "The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one of the other applicants that have little, if any, relationship to the transaction or to polities and objectives of the Communications Act."

The dispute with PhilaComm about whether they have access documents and the like, whether they have been paid according or not is simply not a legally justifiable reason for this Committee to not proceed in approving the transfer. The question as to how the system has been run and how Time Warner, that is absolute within the purview and, frankly, our colleagues from Time Warner can address that and we would not suggest that that is not an inappropriate question. It is the conversation between minority investors that are in the joint venture is where we think we have tried to be responsive to the situation, but Communications Act, the FCC rules and its decisions are clear on that point.

COUNCILMAN RIZZO: You quoted the FCC. Would you tell us when that was?

MR. WALDRON: That actually was from a 2001 decision. It's application for consent to the transfer of control of licenses in Section 214 Authorizations and the cite is 16 FCCR Federal Communications Reporter 6547,6550, and that's a 2001 decision.

COUNCILMAN RIZZO: Thank you.

COUNCILMAN NUTTER: Why don't we do this. First, Mr. Waldron, I do appreciate your view and perspective on this and I respect you as well. If you would be so kind as to hand up something to one of our Sergeant-at-Arms with the various citations, that would be helpful.

MR. WALDRON: If I might just respond, it is in the February 10th letter. The two quotes of the citations are in the February 10th letter from Mr. Holder to Chairman Clarke.

COUNCILMAN NUTTER: I would be glad to look through the pile of letters that I have, since I have one from virtually every day for the last month or so. I'd be glad to look through all of those letters.

Secondly, let me suggest this to you or say it actually not such as a suggestion but very directly. I respect and appreciate the work of other branchs of government, and we'll talk a little bit about the FCC in a few minutes. I don't work for the FCC. I work for the citizens of the City of Philadelphia. There are 157,721 of them in my Councilmanic district. Four times I've taken an oath that says that I will discharge the duties of my office with fidelity. So that's what I'm going to do, notwithstanding whatever the FCC has to say about what we can consider and what we cannot consider. This is not only a matter involving a dispute between PhilaComm and Inner City Cable Corporation. This is a transfer of a franchise. We've been down this road on more than a couple of occasions under different circumstances. And speaking for myself, I will take into consideration all matters and information and data that I receive, notwithstanding whatever the FCC says that third parties can do or cannot do or what municipalities can or cannot look at, because one day the Chief Clerk is going to stand up at that podium there and will call my name and then I'll decide based on my own criteria how I exercise the duties of my office and discharge them. So that's what I'm going to do. I can't tell you what anybody else is going to do, but that's what I'm going to do.

I've read through all the material. I've read all the letters. I have the stats. I'll be glad to look at the citations, but let's be clear. This is not and will not be reduced to just a matter between a group of investors, third-party entities and other people who may have an interest, because are you are now in our forum. You're not over at the MSB Building, you're not over at One Parkway, you're not on the sidewalk somewhere; you've come within the rails, and you have some experience with this, as I understand it. You have a little previous history of legislative process?

MR. WALDRON: Yes, sir.

COUNCILMAN NUTTER: Why don't you tell us about that.

MR. WALDRON: Prior to joining Covington and Burling, I spent 10 years on Capitol Hill as a Senior Counsel to the House Subcommittee on Telecommunications and was the staff that wrote the 1984 Cable Act and the 1992 Cable Act, which I will say the 1984 created the franchising authority and the 1992 Cable Act adopted ed the provisions that we're speaking about that governs us today.

COUNCILMAN NUTTER: As you have experience working with legislative bodies, you know that legislators take very seriously their duties and their responsibilities and what they take into consideration in making their decisions; you know that, right?

MR. WALDRON: Yes, sir.

COUNCILMAN NUTTER: Okay, so we've now established where everybody is.

MR. WALDRON: Yes, sir

COUNCILMAN NUTTER: Good.

Let's talk about the franchise and qualifications and suitability. Why don't we have some of that discussion?

MR. WALDRON: I assume that's a question for our friends at Time Warner.

COUNCILMAN NUTTER: You can have anybody you want to answer questions.

MR. FOGARTY: My name is John Fogarty. I'm an attorney with Time Warner Cable.

MS. MARTIN: Regina Martin, the general manager of Urban Cable Works.

MR. FOGARTY: We have both, I think, testified at the last session with respect to our view of Time Warner's record in managing this system. There's been a lot said this afternoon that I don't have the full record that was presented, but a lot of things we obviously disagree with. We believe that we have been in compliance with the franchise. I believe that's been the assessment of the City staff that's involved with that. I think we've provided extensive information with respect to our qualifications.

There was only one factual matter that I did want to particularly take mention of. I think there was a mistake made by Mr. James in his testimony, and it's a matter of memory so I think it's understandable. But with respect to the ownership of the system, even though the name Wade was still used from the period of December 1995 until the transfer of the franchise into the present franchisee, Urban Cable Works of Philadelphia, the franchise was wholly owned by subsidiaries of Time Warner. And we're really proposing a situation --

COUNCILMAN NUTTER: Mr. Fogarty, I'm sorry. Give me those dates again.

MR. FOGARTY: The dates I have would either late '95 or early '96 until, it looks like, January of 2000.

COUNCILMAN NUTTER: And your statement is what?

MR. FOGARTY: Is that the ownership during that period was through subsidiaries wholly owned by Time Warner, so there were no local investors at that time.

COUNCILMAN NUTTER: There were no other investors, no other partners, no other entities?

MR. FOGARTY: They were all entities wholly owned by Time Warner.

COUNCILMAN NUTTER: And you're a good lawyer also. You seem particularly focused on the phrase "wholly owned subsidiaries." Does that mean that no other individuals are involved with those entities or they were sub-entities solely created by Time Warner for business purposes?

MR. FOGARTY: For business purposes or the acquisition of previously existing entities.

COUNCILMAN NUTTER: In which no other individuals had any --

MR. FOGARTY: That's correct.

COUNCILMAN CLARKE: For the record, Mr. James earlier had called me aside and asked to be able to correct two parts of his testimony, and I indicated that he will be around for a while and can do that at a later date. So he does have some clarification on a couple things he said.

COUNCILMAN NUTTER: Well, let me ask this question. Is it correct or incorrect -- and I don't know if you've seen this document, but on the issue of subscribers, the materials received earlier would seem to indicate what probably amounts to about a 20 percent drop in subscribership from year end 2000 to year end 2004, going from 67,786 to 50,071. Are those numbers correct?

MR. FOGARTY: I defer to Ms. Martin on that.

MS. MARTIN: I would say those numbers are pretty much correct, yes.

COUNCILMAN NUTTER: They are correct?

MS. MARTIN: Yes.

COUNCILMAN NUTTER: So that's not in dispute.

MS. MARTIN: No, that's not in dispute.

COUNCILMAN NUTTER: And with regard to the issue of penetration rates, if the 50,000 is correct, then is it also true that the rate would be 31 percent based on 168,878 being passed?

MS. MARTIN: Now, that I would say would be suspect only because within our franchise area as well as the entire City of Philadelphia, there has been a loss of population. So 161,000 passing number was from several years ago. So to say that that is an accurate number today, I would not say that. But at the same time, I don't have the accurate number to report today.

COUNCILMAN NUTTER: Would you be able to provide to the Committee information relative to this?

MS. MARTIN: I think to get a hundred percent accurate, what we would need to embark on is a systematic walk-out of our entire franchise going door to door and note those homes that are no longer there or that are vacant. So to say that we're able to get an accurate number in a short period of time, I would not say that.

COUNCILMAN NUTTER: What do you believe your penetration rate to be? You have a requirement, I believe, under the franchise agreement to make reports and that issue; is that correct?

MS. MARTIN: That is correct. We do currently report based on the 161,000 number that you reported there.

COUNCILMAN NUTTER: So you're using this number?

MS. MARTIN: We are using that number as a current penetration, yes.

COUNCILMAN NUTTER: Well, Ms. Martin, then I would only suggest to you that on the one hand you're suggesting that the 161 number may be incorrect because of population loss or demolition of homes or whatever the case may be, but you're using that as the base. We've already established that the subscribership is at the $50,000 level. So the number at the moment is the accurate number because you have no other measurement by which to report.

MS. MARTIN: That is correct. But I, again, for the record wanted to state that there have been changes that have happened within our franchise over the past several years, as you noted, demolitions or vacancy that has not been updated, but that is the number that we're going by right now. That is the most current information that we have.

COUNCILMAN NUTTER: Well, I would suggest to you that representing a fair amount of the franchise area, there probably has not been that significant a change in the franchise area. Of course, there have been a few here and there, but there also have been new homes built in a variety of areas in the same franchise area.

Did you have other items that you wanted to put on the record in terms of statements that have been made earlier with regard to qualifications.

MS. MARTIN: I do not have a copy of the report that was presented earlier. As Mr. Fogarty stated, we gave our testimony prior, and so there's nothing additional that I needed to add. However, if there are any questions that you may have, I'll be happen to entertain those.

COUNCILMAN NUTTER: All right. I'll come back to you on that.

Mr. Fogarty, do you recall at the last hearing I had asked for either of yourself or Mr. Holder and analysis of the transaction. I've asked about the total sales price and the break-out. This is believe when -- was that Mr. Shirley?

MR. FOGARTY: Mr. Shirley testified at the last hearing.

COUNCILMAN NUTTER: Mr. Shirley was at the table who I see has figured out that maybe he didn't want to be with us today. I can't imagine why. He had a pretty good experience last time with us.

I do not recall receiving a document laying out the information that I had requested.

MR. HOLDER: Actually, Councilman, on February 4th I sent you a letter that broke out the financial information. It's dated February 4. I think we faxed it to you as well as well as sent it. It's a three-page letter.

COUNCILMAN NUTTER: Do you want to go into the record and tell us exactly what it says?

Maybe that's in Tab 8.

COUNCILMAN CLARKE: You only have one copy?

COUNCILMAN NUTTER: Councilman, it also appears to be in Tab 8.

COUNCILMAN CLARKE: Thank you.

COUNCILMAN NUTTER: So we have in '99 the Area II franchise was purchased by Urban Cable Works for $160 million?

MR. HOLDER: That's correct.

COUNCILMAN NUTTER: And why don't you work with me here? For the current transaction, the sales price is what?

I'm not seeing another figure.

MR. HOLDER: Councilman, I beg your indulgence for a minute.

COUNCILMAN NUTTER: Sure. No problem.

(Pause.)

MR. HOLDER: Councilman, I'm not even sure at this point. Could you restate the question to make sure I'm giving you the correct answer?

COUNCILMAN NUTTER: What I'd like to better understand is the financial nature of the transaction. What I'd asked back at the last hearing was the purchase price or the sale price of the franchise to Time Warner as well as a break-out of who's getting what, because you have multiple investors and parties. So how are those funds being distributed? That's what I asked at the last hearing.

MR. HOLDER: Councilman, what I'd ask is to allow Mr. Murad Kalam who is a lawyer with my firm, Covington and Burling who also represents Inner City to respond to that question.

COUNCILMAN NUTTER: I knew he was going to end up at the table at some point.

MR. KALAM: My name is Murad Kalam and I represent Inner City. To answer the question, the $53 million was the purchase price for the Area II franchise to Time Warner.

COUNCILMAN NUTTER: I thought Time Warner was buying the franchise.

MR. KALAM: Excuse me. That Time Warner is paying Urban Cable Works for the Area II franchise.

COUNCILMAN NUTTER: Okay, just hold that thought. Time Warner is paying $53 million to Urban Cable Works for its 60 percent share.

MR. KALAM: That's right.

COUNCILMAN NUTTER: Now, back on June 3, 1999, Urban Cable Works paid $160 million for this franchise, correct?

MR. KALAM: That's right.

COUNCILMAN NUTTER: Well, what happened between June 3, 1999, and it appears that this transaction at least started on June

30 -- at least executed a purchase agreement on June 30, 2004? Was that like an agreement of sale?

MR. KALAM: That's right.

COUNCILMAN NUTTER: Has it been executed?

MR. KALAM: It has been executed pending --

COUNCILMAN NUTTER: Pending transfer.

MR. KALAM: Right.

COUNCILMAN NUTTER: So how is it that the franchise has, in essence, lost $107 million in value?

MR. HOLDER: Councilman, in terms of what happened in the most recent transaction, the $53 million figure only represents a part of the total interaction between the parties. I guess we were trying to respond to the specific question you had. There are other components to the deal.

COUNCILMAN NUTTER: Okay. I'm really asking the broader question, so if there are other components, I'd like to better

-- I'm just trying to understand the transaction now. You gave me a chart. Murad was kind enough at the last hearing to put together a multi-colored chart. It shows all the parties, all the players. And now I'm trying to follow the money. You paid $160 million for something five years ago, five and a half years ago as the group. It cannot have a value five years later of $53 million. You wouldn't buy something under that circumstance. So there must be other dollars going other places that is going to add up to some amount that has to be greater than $160 million. So where is the rest of the money?

MR. HOLDER: We're dealing with only a 60 percent figure when it comes to the most recent transaction. As I said --

COUNCILMAN NUTTER: I got that.

MR. HOLDER: So that explains at least in part. And then I guess we have to look at the total value of the exchange or the total value of the deal between the parties --

COUNCILMAN NUTTER: But hold on for

a second. When you say that on June 3, 1999, the Area II franchise was purchased by Urban Cable Works, now, Urban Cable Works is 60 percent owner of the overall franchise; is that correct? Was $160 million for the 60 percent? Was the $160 million for the hundred percent?

MR. KALAM: Mr. Nutter, as I understand it, this has a point of confusion. There is also an Urban Cable Works of Philadelphia, L.P., and as I understand, although I'd like to reserve the right to go back and check all of this information, what Ed Shirley testified to on January 26t was that Urban Cable Works of Philadelphia, L.P., which is 40 percent owned by Time Warner and 60 percent owed by Urban Cable Works of Pennsylvania, LLC, and Urban Cable Works General, LLC, paid a purchase price of $160 million. Therefor, it's not a difference of --

COUNCILMAN CLARKE: Is that for the entire franchise?

MR. KALAM: Right. So when we say

Urban Cable Works there, as I understand Ed Shirley's testimony, when Ed Shirley said that Urban Cable Works of Philadelphia, L.P., paid 160 million, he was talking about both Time Warner and Urban Cable Works of Pennsylvania, LLC, and Urban Cable Works General, LLC. That's as I understand it.

COUNCILMAN CLARKE: Is that how you understand it or is that what factually happened?

MR. KALAM: That's my understanding of what happen. I would only ask that we would have the right to go back and check any numbers, but that was my understanding.

COUNCILMAN NUTTER: Well, who's the party who paid the $160 million? They would probably know.

MR. HOLDER: Urban Cable Works of Philadelphia, LLP.

COUNCILMAN NUTTER: And who are they?

MR. KALAM: Would you repeat that question, please?

COUNCILMAN NUTTER: Who paid the

$160 million?

MR. KALAM: It would have been Urban Cable Works of Pennsylvania LP -- excuse me. Urban Cable Works of Philadelphia, LP, which is the operating company jointly owned by Time Warner Cable, 40 percent, and Urban Cable Works of Pennsylvania, LLC, 57 percent, and technically Urban Cable Works General, 3 percent.

COUNCILMAN NUTTER: Okay, I got that.

MR. KALAM: So it's not diminishing from 160 million to --

COUNCILMAN NUTTER: It's the middle of the chart.

MR. KALAM: That's right.

COUNCILMAN NUTTER: So within that 160, Time Warner's already has its 40 percent. So are you saying that the 160 gets split between these two entities with a 40/60 split?

MR. KALAM: In terms of the price that was paid, yes.

COUNCILMAN NUTTER: So when you now say that Time Warner is paying $53 million, who are they paying it to?

MR. KALAM: The $53 million is paid to Urban Cable Works of Pennsylvania, LLC, and Urban Cable Works General, LLC, the 60 percent owners of Urban Cable Works of Philadelphia, L.P.

COUNCILMAN NUTTER: They're paying $53 million for the 60 percent that they own?

MR. KALAM: That's right.

COUNCILMAN NUTTER: What's the total value of the franchise?

MR. KALAM: We don't know the value of the franchise at present. We don't have that information with us.

COUNCILMAN NUTTER: Mr. Fogarty? You're the other 40 percent.

MR. FOGARTY: I think for purposes of this transaction, you would have to look at what the consideration was paid for the 60 percent. That's how, I guess, it was valued by the buyer and the seller. There's really no other way to determine what the value is.

COUNCILMAN NUTTER: Mr. Fogarty, you can't act like you're an uninterested party;

you're the buyer.

MR. FOGARTY: And we agreed to pay that price for 60 percent, and you just do the math.

COUNCILMAN NUTTER: Well, I'm working on that, but what's the value of the franchise?

MR. FOGARTY: Before I gave a figure, I would have to talk to our accounting people. I don't want to give a number because I'm not expert in any way of evaluating franchises. We're talking about the particulars of this transaction here. This purchase price was agreed upon several months ago. I doubt there's been any significant change in the value of the franchise.

COUNCILMAN NUTTER: No, I'm asking about the overall value of the franchise.

MR. FOGARTY: By that you mean, I assume, the value of the cable system and franchise. I just want to be clear about that. We're not talking about assigning a value to the franchise, we're talking about the entire cable system and its assets and everything that goes along with it. Here, we're talking about consent to the transfer of the franchise, but the purchase price is paid not -- for the franchise is an asset of the partnership, but the partnership has a lot of other assets, too. It has its ongoing business, it has its equipment, its trucks, all these things are part of the value of the cable system, and that's what the price is paid for.

COUNCILMAN NUTTER: Mr. Fogarty, you could very well understand that any one of us would have difficulty understanding, for the moment, how Urban Cable Works could pay $160 million for a franchise five years ago and subsequently the same franchise or 60 percent of it is being sold for $53 million. The math -- this is not adding up in a way that I can understand. Now, if there are other pieces and components, if we're now going to get into hide the ball, then we're just going to have a different kind of conversation.

MR. FOGARTY: I'm sorry, into what?

I didn't hear you.

COUNCILMAN NUTTER: Hid the ball. If we're not going to put information on the record, if we're going to have, "Well that's over there and the other one is over there, we can't find it," I'm not going to go chasing around after it. But do not insult this Council or this record by trying to convince some of us that something that was valued at $160 million five years ago is now being given consideration for 53 five years later. There's other money somewhere going other places that is not on this table and is not a part of this discussion. And you know I asked about this at the last hearing, and I was told that I would have a chart that laid out the financial transaction. Now, it's starting to get a little late in the day. And you know that I asked for this information, correct? You know I asked for this information at the last hearing.

COUNCILMAN RIZZO: Yes, you did.

MR. FOGARTY: And I understood that that was provided to you in Mr. Holder's letter.

COUNCILMAN NUTTER: I've got this letter. It tells me the start of the discussion. It gives me know end. There is no other number in this document. The 53 million is not even in the document, so there is no answer in this letter.

MR. HOLDER: Councilman, we tried to share the information that we could, again, following the directions of our client with regard to the questions I understood the way you asked. Now, maybe I didn't understand what you asked for. I thought we were responsive in the letter that we sent to you on February the 4th. I had not heard back form you that it was not. And that's why I assumed what I sent was, in fact, a response to the question that you posed to us at the earlier hearing.

COUNCILMAN NUTTER: Mr. Holder, I asked Mr. Shirley. He started to answer. He started talking about -- I have my notes here -- $87 million for 60 percent interest. Then he started talking about a net return of

24 million, 63 million net to the investors, on and on. I asked for a chart or some analysis that shows the complete transaction financially of all the various parties and where the money is going. Now, that is what I asked for.

MR. HOLDER: With all due respect, Councilman, I thought that what I sent you, as I said, on February the 4th was exactly what you had asked.

COUNCILMAN NUTTER: Then, Mr. Holder, I'm only left to ask you the question. Tell me what the purchase price is. Show me where the financial transaction is in this letter. There are no other numbers in this letter. You've $160 million in purchase price, you go through what PhilaComm invested, where that came from, we go through all of that drama, who has what interest, on and on and on. And there's no other mention of the financial transaction. This letter is in no way responsive to that question. It shares a lot of information and communicates other pieces of data that is important as the lawyers want to send letters all around to everybody. It has nothing to do with the question I asked. This letter is about a whole other purpose that has virtually nothing to do with my question. And I took it as such. This is a lawyer's letter for lawyers for future consideration. It has nothing to do with the question I asked.

MR. HOLDER: Councilman, with all due respect, we've a number of communications after February the 4th in a number of contexts. And at no point did you indicate that the letter that we sent on February the 4th was not responsive. This is the first time I'm hearing this.

COUNCILMAN NUTTER: Mr. Holder, I have no reason to believe that this letter by itself is responsive to what I asked Mr. Shirley. It does not say that. It does not say, "This letter is a letter that lays out the financial transaction and which parties are getting what as a result of anything else." You had to search at the table for the $53 million. That's not in this letter. That

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would be some indication that there was some effort at answering that question. This letter is about who invested what, who paid what, who didn't do what, who did what with whom. It has nothing to do with the question I asked Mr. Shirley, and he's not here anyway.

MR. HOLDER: The first sentence of the letter says, "You requested additional financial information about the sale of the Area II franchise which I present below."

COUNCILMAN NUTTER: Right. And now I'm going to ask you, other than the $160 million purchase price from five years ago, tell me in this letter where I would find $53 million being paid by Time Warner for the current franchise.

MR. HOLDER: We tried to work in in crafting this letter with the information that we shared with you, which I indicated --

COUNCILMAN NUTTER: Mr. Holder, is there any other number in this letter that indicates one dime going to any other party related to a purchase price? Yes or no?

MR. HOLDER: The letter speaks for

itself, Councilman. I'm not going say --

COUNCILMAN NUTTER: The letter may speak for itself; it just doesn't answer my question.

MR. HOLDER: It answered the question that you put to us, I thought. And if I was wrong, I did not get an indication from you --

COUNCILMAN NUTTER: The question was, tell me the sales price and all the mechanics of the financial transaction. That was the question. Mr. Shirley struggled with that question at the table. He then, as always, reserved the right to come back. Mr. Waldron, I believe, came back to the table and said, "We'd like to have an opportunity to go over this and we'll get back to you with the details." This letter is not responsive to that question. But if you know the answers to the question, because we can just -- we don't know each other that well. Let me assure you, we can sit here all night long which will not make my colleagues very happy. Councilman Clarke knows that well. Councilman Rizzo knows that well. We'd be talking about this 2 o'clock tomorrow morning. That's fine with me. Probably not too productive. But since you obviously have the information and we now know it's not responsive in this letter, show me on the a piece a paper, this wonderful chart that I have here, put on this document how much money the entities are getting, what the price is, and tell me what the total is. It cannot be that some amount of money is being paid for this franchise which is less than what was paid five years ago. Not possible.

MR. HOLDER: Councilman, if I can five minutes. We're dealing with a settlement agreement. This gets into the settlement agreement. That's at least part of the problem. It gets into the settlement agreement between --

COUNCILMAN NUTTER: I don't want to be in the settlement agreement. I want to be in the where-is-the-money-going discussion.

MR. HOLDER: But part of the purchase price is contained in that settlement agreement. And also with regard --

COUNCILMAN NUTTER: I understand. I've not asked for the settlement agreement. If it's in the settlement agreement, then you're going to say an X amount of dollars in a settlement agreement to whomever. I'm not asking for that, the whomever. I didn't ask to see the document. I asked to see where the money is going and who it's going to.

MR. HOLDER: All right. If you give me five minutes, what I will try to do is craft an answer to that question without getting into the terms of the settlement agreement beyond that which I think is necessary to answer the question. But again, just for the record, what I thought had happened was that Mr. Shirley had supplied the information that you wanted in large part, but there were additional questions --

COUNCILMAN NUTTER: Mr. Shirley gave me nothing but numbers. Mr. Shirley gave me on my little yellow pad here, sales price $87 million for 60 percent interest. I took down, net return of $24 million. Then he added in the 63 net to the investors. That's what I goat from Mr. Shirley. No names, no boxes, no nothing.

MR. HOLDER: If you give me just a couple minutes, I'll try to reconstruct or construct something that would be responsive to the question now put to us.

And with regard to what was asked whether we were responsive, I think you have your position, I certainly have ours. And if give me a couple minutes, I will put together something.

COUNCILMAN RIZZO: Point of order.

COUNCILMAN CLARKE: Councilman Rizzo.

COUNCILMAN RIZZO: You know, I'm sitting here very patiently and I listened very carefully, and you just said something that kind of tickled me. You're going to construct the question you were just asked. It was very clear to me as a member of this Committee that Councilman Nutter asked for exactly what he asked for today, so I don't know how there was any miscommunication.

MR. HOLDER: With all due respect, Councilman --

COUNCILMAN RIZZO: If you need to construct something, it's because it wasn't constructed in that letter.

MR. HOLDER: And I will admit that that might be the case. I will also indicate that what I thought in the letter was responsive. I was wrong, I will admit that.

COUNCILMAN RIZZO: I just want to let you know, I'm a member of the Committee. I heard the Councilman ask the question. I understood. And if I were to respond, I would have responded differently because that's not what the Councilman asked you to do.

MR. HOLDER: Again --

COUNCILMAN RIZZO: I just want you to understand we're up here listening as carefully as you are, and I understood what he asked, and I just wanted to make sure you understood that we understood what he asked.

MR. HOLDER: Believe me, I understood. I hear. I understand English, I understand that. But I hope you understand my position as well.

COUNCILMAN RIZZO: I understand you misunderstood what he asked.

MR. HOLDER: I'm not trying to hide the ball, as was indicated. I'm not trying to be disrespectful. It was a genuine attempt on our part to answer the question.

COUNCILMAN RIZZO: End of conversation.

MR. HOLDER: That's fine.

COUNCILMAN CLARKE: Councilman Nutter.

COUNCILMAN NUTTER: Mr. Chairman, I gentleman has asked for some time to reconstruct the transaction based on the question that was asked at the last hearing a number of weeks ago. That would certainly be fine with me. I know we have Mr. James here. Maybe we can get is information while the folks are in the back reconstructing.

COUNCILMAN CLARKE: Mr. James.

Gentlemen, would you prefer to do it at the table or you want to go in the hallway?

MR. HOLDER: I think I'd like to

step outside.

COUNCILMAN CLARKE: That's fine.

Mr. James, if you can come back and clarify some of your earlier statements.

I'm sorry, gentlemen and lady. I'm sorry.

MR. JAMES: Thank you, Councilman.

I believe some of the questions that Councilman Nutter had asked me earlier, I was not able to give him the specifics. I would like the opportunity to clarify what my answers are and try to provide him the details that I now have available.

COUNCILMAN CLARKE: Please proceed.

MR. JAMES: The question came about the history of the franchise and the level participation, the ownership level. Mr. Fogarty from Time Warner was accurate that my earlier comments were based on my memory and I might not have it accurate. But what I would like to put on the record is what's in the franchise agreement which recites some of the transactions that occurred over the franchise from March 29th, 1984 when the franchise was awarded to Wade Communications, a Limited Partnership in Pennsylvania. That in Bill No. 1002, approved July 9, 1986, the City approved a transfer of the franchise at that time from the franchisee, which would have been Wade Communications, Limited Partnership, to James N. Wade and Wade Communications, Inc., as general partners of the franchise.

And in Bill No. 950516, approved December 7, 1995, the City approved the transfer of the franchise from Wade Communications partnership to a newly constituted and restructured Wade Communication partnership wholly controlled by Time Warner, Inc. That agreement, I believe, still retained to some degree Mr. Wade an his involvement in the franchise even though, according to Mr. Fogarty's testimony, he was very specific in the term it was now a wholly controlled Time Warner franchise.

COUNCILMAN NUTTER: Mr. James from the documents that you have in this 1995 transaction, are you able to determine what Mr. Wade's interest was in this quote/unquote, wholly owned subsidiary? Did he have any ownership or did he have any equity or did he have any investment in that entity?

MR. JAMES: We are researching and getting a copy of the actual bill to determine what the structure was. My memory, there was some involvement. I can't speak to the specific degree.

COUNCILMAN NUTTER: All right.

MR. JAMES: Your other question had to deal with limited liabilities and their other amounts other than $250. There are a number of other amounts that are located in Section 4 of the franchise agreement, and the amounts that are of the higher value speak to a $2,000 per day limited liability that had to deal with the upgrade and construction of the construction. So delays in the upgrade would have resulted in the $2,000 per day limited liability.

There is also a thousand dollar per day limited liability which speaks to the franchisee disclosing subscriber information.

There is also a thousand dollar per

day that relates the selling and providing of otherwise making available to anyone information about subscribers.

Then there are tow other thousand dollar limited liabilities for failure to comply with the provisions under Appendix E which has to deal with the provisions providing the peg obligations.

And there is a thousand dollar per day which deals with Article 4, Section 10 of the franchise which, again, deals with breaches of the franchise obligation.

Finally, the last bit of information --

COUNCILMAN NUTTER: Well, before you leave that, is there any reason why we should keep this 250 per day level with regard to not filing reports, or should that amount be increased to 500 or a thousand or something like that?

MR. JAMES: Other than what we had negotiated with the franchisee that's applying at this point in time, I don't believe there is any. We intended to do it to be fair and consistent in our approach, and that's why we reach the $250 amount.

COUNCILMAN NUTTER: Well, I don't know what your experience has been, but at least based on today, I'm not feeling that there's been a tremendous amount of consistency or support or even accommodation. I mean, I'd be very concerned about the 250 level. And is the fine for non-compliance in this area in the same section as where the other 250 is? Or are they about different reports or are they about the same reports?

MR. JAMES: No. The fines that are in the report deal with kind of ad hoc or reports that we would ask for. It's made to be consistent with the limited liability section, but it's not the same.

COUNCILMAN NUTTER: I understand. What else do you want to tell us?

MR. JAMES: The last part of the information you asked about the level minority participation as a franchise agreement specifies under Appendix I and has to deal with a couple of areas. Under the area of contracting, there are specific goals. There is a 37.5 percent goal for capital expenditures excluding capital expenditures by the franchise for equipment purchased directly from the manufacturers procured through the local businesses.

COUNCILMAN NUTTER: 37.5 percent contracting goals?

MR. JAMES: For capital expenditures from local businesses.

COUNCILMAN NUTTER: But there was an exception?

MR. JAMES: Excluding equipment that's purchased directly from manufacturers.

COUNCILMAN NUTTER: What was the performance that?

MR. JAMES: I do not have the performance here. And I will provide you a copy of the appendix that recites this information and we will provide a report to the Chair and to yourself on our determination of their performance in these categories.

COUNCILMAN NUTTER: What about employment?

MR. JAMES: Well, in the same contract, and they also have a 38.5 percent for capital expenditures through local minority-owned businesses. There's a separation there. There's 10 percent goal for capital expenditures for female-owned businesses. There's 32.5 dollar value of non-intrinsic goods from local businesses, a 30 percent goal for local minority business, and a 10 percent goal for women.

COUNCILMAN NUTTER: Well, what I would ask you to do, Mr. James, if you could forward to the Chair -- if you would take all of those criteria and provide us with a chart that lays out what the actual performance figures are in accordance with those criteria over the last five years, from '99 to 2004, it would be helpful.

MR. JAMES: We will certainly do that.

COUNCILMAN NUTTER: Thank you.

MR. JAMES: Just to answer your employment question, there are two goals in there. Thirty percent of all job hours of all classifications shall go to minority employees and 20 percent of all jobs of all classifications shall go to women. So there are goals in there, and we do get reports.

COUNCILMAN NUTTER: Great. Thank you.

COUNCILMAN CLARKE: We'll have a five-minute recess.

(Recess.)

COUNCILMAN CLARKE: We are reconvening the Public Property Committee hearing.

COUNCILMAN NUTTER: You can proceed.

MR. HOLDER: Again, this is Eric Holder representing Inner City.

With regard to the numbers that you sought earlier, Councilman, we have some figures. I would only say that these are gross numbers in the sense that we're speaking in millions. There may be 66.3 or something like that.

COUNCILMAN NUTTER: You can round them off.

MR. HOLDER: First, as a baseline,

the purchase price of $160 million would be -- we have to factor in that 60 percent of that would be Inner City share so we're starting at a starting figure of $96 million from the original purchase. There was a $53 million cash payment that would go to Inner City --

COUNCILMAN NUTTER: Hold on for a second, Mr. Holder. Why don't we try to do it this way. Do you have the chart from before?

MR. HOLDER: Right.

COUNCILMAN NUTTER: So when you make mention of the $160 million, what I'd like you to do is take the 160 million and utilize the chart and spread the 160 across the entities involved.

MR. HOLDER: Okay. What I've done -- and I probably have to do a little more math here. The 160 would be for the purchase price that all the parties paid which would break down to the 60 percent interest which would be 96 million would be split between Urban Cable Works of Pennsylvania, LLC, which would be 57 percent and Urban --

COUNCILMAN NUTTER: Hold on. You've

got $160 million being split first in a 60/40.

MR. HOLDER: Right.

COUNCILMAN NUTTER: And the 60 is what?

MR. HOLDER: The 60 is 96 million.

COUNCILMAN NUTTER: Which then leaves?

MR. HOLDER: 64 would be Time Warner, their 40 percent. And the remaining 96 would be Urban Cable Works of Pennsylvania, LLC, and Urban Cable Works General, LLC. 57 percent is Urban Cable Works of Pennsylvania, LLC, and 3 percent is Urban Cable Works General, LLC. I've not done the math on that.

I think my math comes out to Urban Cable Works General, LLC, which has a 3 percent interest would be 4.8 million.

COUNCILMAN NUTTER: It's really 3 percent of the 160, right, is what that comes down to?

MR. HOLDER: Right. Which I think I have at 4.8 million.

COUNCILMAN NUTTER: 4.8, so that leaves you 55.2?

MR. HOLDER: It would actually be --

COUNCILMAN NUTTER: I'm sorry. I'm dealing with the 60 percent issue. Sorry. That's 91.2?

MR. HOLDER: 91.2, right. That would be Urban Cable Works of Pennsylvania, LLC. Those are the numbers we start with.

The deal that was struck between Inner City and Time Warner is as follows --

COUNCILMAN NUTTER: So hold on for one second. Urban Cable Works of Philadelphia, L.P., is the current owner of the franchise; is that correct?

MR. HOLDER: Correct.

COUNCILMAN NUTTER: Who paid $160 million in June of 1999 for the franchise?

MR. HOLDER: That's correct.

COUNCILMAN NUTTER: The shares are distributed such that Time Warner Cable, Inc., is a 40 percent share, which at that point is valued at $64 million and a combination of Urban Cable Works of Pennsylvania, LLC, and Urban Cable Works General, LLC, which have the other 60 percent share which is 96 million is subsequently split 57 percent, 3 percent, respectively which amount to $91.2 million for Urban Cable Works of Pennsylvania and $4.8 million for Urban Cable Works General, LLC, right?

MR. HOLDER: Right. Those are the numbers I have.

COUNCILMAN NUTTER: Okay.

MR. HOLDER: Now, with regard to the most recent sale, the deal between Time Warner and Inner City --

COUNCILMAN NUTTER: Well, let's go down to the next level. Then you have this entity called City Cable works, Inc., of which 20 percent appears to be owned by Fairview and Pacesetter and Mesbit. And then of Urban Cable Works of Pennsylvania, LLC, which is valued at $91.2 million, 20 percent of that is owned by PhilaComm Cable Group, LLC; is that right?

MR. HOLDER: That's correct.

COUNCILMAN NUTTER: So that number would amount to -- that's 20 percent of the 57 percent or is -- 20 percent of the total of Urban Cable Works of Pennsylvania, right?

MR. HOLDER: Right, 20 percent of that 57 percent.

COUNCILMAN NUTTER: That 57 being represented by 91.2, correct?

Would that be 18.24? The other 80 percent of which is owned by City Cable Works, Inc., which is going to be roughly 73 million?

MR. HOLDER: Councilman, if you have a calculator.

COUNCILMAN NUTTER: At the moment I'm just kind of doing the math. 20 percent of 91.2 is 18.24. That leaves 73, which is the 80 percent share of Urban Cable Works of Pennsylvania, LLC, of which 20 percent is owned by another group of investors.

MR. HOLDER: You mean Fairview Capital?

COUNCILMAN NUTTER: Yes, that group.

MR. HOLDER: Right. Well, they actually own, as I understand this, 20 percent of City Cable Works.

COUNCILMAN NUTTER: Exactly. I

understand that to be the same.

So City Cable Works is actually an 80/20 split of its own, right?

MR. HOLDER: Right, between Urban Cable Works of Philadelphia and the partners.

COUNCILMAN NUTTER: So that's pretty easy, that's 14.6.

Okay, do you want to walk back through some of this stuff?

MR. HOLDER: Not particularly, but if you want to, sure.

COUNCILMAN NUTTER: It was really kind of a rhetorical question. I wasn't really giving you a choice.

We have $160 million for Urban Cable Works of Philadelphia, L.P., back on June of 1999.

MR. HOLDER: Right.

COUNCILMAN NUTTER: That is split 60/40, 40 percent going to Time Warner Cable, Inc. That 40 percent share is worth $64 million. The 60 percent is worth $96 million. That is subsequently split between Urban Cable Works PA, LLC, and Urban

Cable Works General, LLC, in a 57/3 split which is valued at $91.2 million for Urban Cable Works PA, LLC, and $4.8 million for Urban Cable Works General, LLC.

Urban Cable Works Pennsylvania, LLC, which has a value at that point of $91.2 million is subsequently split 20/80 between PhilaComm Cable Group and City Cable Works, Inc. The $91.2 million is split 18.24 to PhilaComm and roughly $73 million to City Cable Works. City Cable Works is split 80/20 between itself and a group of investors Fairview Capital, Pacesetter, Mesbit. 73 million is subsequently split 58.4 million to City Cable Works and 14.6 million to the 20 percent investors, Fairview and Pacesetter.

Are we in the same place?

MR. HOLDER: Yeah, I believe we are, Councilman.

COUNCILMAN NUTTER: And so then Urban Cable Works of Philadelphia, Inc., has a value of $58.4 million, and it would then appear that the Inner City Broadcasting Corporation would also have the same $58.4

million value.

MR. HOLDER: Councilman, I think the way this would go, Inner City Broadcasting actually has a hundred percent so -- you start to break off below that. If you start at the --

COUNCILMAN NUTTER: I started up at the top with Urban Cable Works of Philadelphia. You said that was the entity that bought the franchise for $160 million, right?

MR. HOLDER: Right. I'm just saying that in terms of trying to figure out the 60 percent -- in terms of the 60 percent that is not Time Warner, all of that ultimately is Inner City, looking at this chart as, I think, you were working your way back.

COUNCILMAN NUTTER: Right.

But then three are pieces split off with all the different groups.

MR. HOLDER: Right, that's fine.

COUNCILMAN NUTTER: So what is the purchase price of the Area II franchise as we're sitting here today, and how are the dollars being split up?

MR. HOLDER: What you have to understand is that in terms of the deal -- I wouldn't call it the purchase price, but the deal that was struck between Time Warner and Inner City, a component of that is the purchase price, but there are other parts of that. And I'm prepared to tell you those. So you have $53 million that would go to Inner City for its interest in the franchise.

COUNCILMAN NUTTER: And if I were to take that $53 million, where would I put it on this chart? Would I start down at the bottom?

MR. HOLDER: I think that would go to the bottom, Inner City Broadcasting -- I guess Urban Cable Works of Philadelphia, that's what I mean.

COUNCILMAN NUTTER: Okay. Which five years ago, the way this all works out, appears to have a value of $58.4 million.

MR. HOLDER: Again, you can't divorce the totality of the deal. I don't think you can segregate them that way. In structuring the deal, as I've called it, there are a number of components. And so to the extent that the value might appear to be less, it's not actually less when you look at the total value of what happened between the entities.

COUNCILMAN NUTTER: Why don't we walk through the deal. $53 million to --

MR. HOLDER: Inner City for its interest in the franchise.

COUNCILMAN NUTTER: Inner City Broadcasting Corporation or -- they are one in the same with Urban Cable Works of Philadelphia, right?

MR. HOLDER: I guess technically it was Urban Cable Works of Philadelphia.

COUNCILMAN NUTTER: All right, why don't we use that? Urban Cable Works of Philadelphia, Inc., right?

MR. HOLDER: I believe that's correct.

COUNCILMAN NUTTER: Okay. What else?

MR. HOLDER: There is then an amount that goes to Inner City of $34 million to settle disputes between the parties.

COUNCILMAN NUTTER: Is that the same Urban Cable Works of Philadelphia, or is that Inner City Broadcasting?

MR. KALAM: Councilman Nutter, the 34 million went to Urban Cable Works of Pennsylvania, LLC, and Urban Cable Works General, LLC.

COUNCILMAN NUTTER: $34 million to those two entities?

MR. KALAM: Yes.

COUNCILMAN NUTTER: And is that still split in a 57/3?

MR. KALAM: Yes.

COUNCILMAN NUTTER: That goes to Urban Cable Works PA, LLC/Cable Works General, LLC.

Now, this is for disputes? Must have had a big dispute.

MR. HOLDER: There were disputes.

COUNCILMAN NUTTER: And that's a part of the deal?

MR. HOLDER: Part of what I've called the deal.

COUNCILMAN NUTTER: What is its relationship to the Area II franchise?

MR. HOLDER: Well, Councilman, now we're getting into things that I think that are not a part necessarily of this deal. There is a connection in that the parties are trying to work out all that existed between them. And I'm not sure I can ascribe any portion of that 34 or I can tell you today what portion --

COUNCILMAN NUTTER: To some extent initiated by this transaction?

MR. HOLDER: Yes, I'm sure that's the catalyst for the resolution of all that existed between them.

COUNCILMAN NUTTER: So they're trying to resolve all their issues?

MR. HOLDER: Right.

COUNCILMAN NUTTER: And this becomes the point of precipitation, to some extent?

MR. HOLDER: To some extent.

COUNCILMAN NUTTER: We'll come back to that.

What else is involved in the

transaction?

MR. HOLDER: $66 million to eliminate the debt owed to Time Warner Cable by Inner City.

COUNCILMAN NUTTER: Say that again.

MR. HOLDER: $66 million to eliminate a debt owed to Time Warner by Inner City -- I guess it's actually by Urban Cable Works.

COUNCILMAN NUTTER: Urban Cable Works owes Time Warner $66 million. And I appreciate your sensitivity, but just so I can understand this, are we essentially talking about debt forgiveness, or are we talking actual cash?

MR. HOLDER: Debt forgiveness.

COUNCILMAN NUTTER: So that's the value?

MR. HOLDER: That's the value.

COUNCILMAN NUTTER: The value of debt forgiveness by Time Warner to Inner City?

MR. HOLDER: To Urban Cable Works.

COUNCILMAN NUTTER: Urban Cable Works.

Let me ask this question. This Urban Cable Works, does this entity only operate in Philadelphia, or is this a corporate entity that operates in jurisdictions outside of Philadelphia?

MR. HOLDER: I believe only in Philadelphia.

COUNCILMAN NUTTER: Is this debt related to the Philadelphia operation?

MR. HOLDER: I think that's correct, Councilman.

COUNCILMAN NUTTER: Is it correct? Do you think it's correct? Is it?

MR. HOLDER: I believe it's correct.

COUNCILMAN NUTTER: And what else?

MR. HOLDER: I think the last part then is the assumption of debt by Time Warner in the amount of $55 million -- of Urban Cable Works.

COUNCILMAN NUTTER: Time Warner is literally placing onto its own balance sheet $55 million in debt?

MR. HOLDER: I'm not an accountant. I don't exactly how they would do it, but they assume debt. I wouldn't want to go further than that. I assume it goes on their balance sheet, but I'm not an accountant.

COUNCILMAN NUTTER: Anything else?

MR. HOLDER: Nope, that's it.

Councilman, just for the record, I've attempted to answer these questions. And with all due respect, we're not conceding. I just want to reserve the record the answer these questions are necessarily germane or consistent with the scope of what the Council has before it, but in attempt to cooperative, I've supplied these answers with that reservation.

COUNCILMAN NUTTER: I appreciate it. And I guess if we were in court, the Chairman would say "so noted"?

MR. HOLDER: "So noted," that's what the judge would say, absolutely.

COUNCILMAN NUTTER: So in reality, the deal or the transaction is clearly much more than a $53 million transaction?

MR. HOLDER: That's correct.

COUNCILMAN NUTTER: It's really

about a 208-plus million dollar transaction?

MR. HOLDER: Yes, subject again to the rounding that we've done here.

COUNCILMAN NUTTER: It's at least 208.

MR. HOLDER: Could be more.

COUNCILMAN NUTTER: Because all of the other little hundreds of thousands will add on to the thing.

First let me go back and say, while I do appreciate the effort and even your belief in attempting to answer the question that I'd ask Mr. Shirley a while ago, today's exercise gets a lot closer to really answering that question.

Now, the $53 million, is that cash?

MR. HOLDER: Yes.

COUNCILMAN NUTTER: And the $34 million, I didn't make myself, what is that?

MR. HOLDER: That's the dispute resolution component.

COUNCILMAN NUTTER: And is that cash?

MR. HOLDER: Yes.

COUNCILMAN NUTTER: So we've got cash and cash and then we've got $66 million in debt being forgiven. That must really take a load off somebody's mind.

MR. HOLDER: In my life it would.

COUNCILMAN NUTTER: And then 55 million which is really coming off of somebody's balance sheet and going somewhere else, right?

MR. HOLDER: Correct.

COUNCILMAN NUTTER: Okay.

Now, how does this all get distributed based on the chart and the interlocking relationships among these various parties?

MR. HOLDER: Councilman, I do not have an ability to answer that question today. I couldn't give you answers that I would feel comfortable with in trying to figure out the percentages and how -- I just don't have that ability today.

COUNCILMAN NUTTER: Okay. But we at least know that there's $87 million in cash that is being paid for -- is it fair the

$87 million at a minimum in cash is covering the 60 percent ownership?

MR. HOLDER: No. I don't think you can look at it that way. Again, I think you have to look at the --

COUNCILMAN NUTTER: Or is it really the $208 million in overall cash and consideration that's taking care of the 60 percent?

MR. HOLDER: It's a hard question. The settlement amount, I'm not sure you necessarily could put as a value in terms of a value if you're trying to value the system. I really don't want to get into what the settlement --

COUNCILMAN NUTTER: I understand that.

MR. HOLDER: What that settles, but I don't think you can necessarily ascribe that to a value of the franchise. I mean, there were disputes between the parties.

COUNCILMAN NUTTER: Right. And obviously you've got other considerations going on because you've got over a hundred million dollars, more than half of the total transaction amount is dealing with various debts either being for given or written off or assumed.

Who would have the ability to -- I mean, as you've now reconstructed the transaction, who would then have the ability to take it apart in its components related to the 208?

MR. HOLDER: I'm not sure I understand.

COUNCILMAN NUTTER: That $208 million of cash and consideration, you have any number of parties here, Urban Cable Works of Philadelphia, you've got these investors over to the side, Fairview, Pacesetter, Mesbit. I assume they're getting something. You've got PhilaComm. You've got an entity which is probable no person called the Urban Cable Works of Pennsylvania, LLC, and Urban Cable Works General, LLC. I mean, you've put a transaction together, a deal, as you've called it. It now has a value of $208 million. It then has to be deconstructed because dollars have to go different places. I mean, people didn't make these investments because they didn't have anything else to do with themselves.

MR. HOLDER: Councilman, I really don't see how -- and this is with all due respect, how the money gets distributed among the investors, how that could possibly be a part of the suitability analysis that you are charged with doing. And it really gets into private relationships and financial relationships between parties.

COUNCILMAN NUTTER: Well, I think I'd say back to you with the same amount of respect, one, we ask these questions all the time. Two, you're in a public forum. Three, you're contracting with a public entity that has some responsibility to try to understand the transactions in front of it. This is what we do. So as a part of our jobs -- I mean, I didn't ask you how the signal gets from one place to the other or what kind of equipment you use to run the operation.

You're asking to transfer a

franchise. We're in a public hearing about that. The franchise has a value. We're trying to understand how the different pieces and components all fit together as a part of our responsibility to understand what it is that we're voting on.

MR. HOLDER: It is conceivable -- I don't say it is likely, but it is conceivable it could be litigation between PhilaComm and my client. For me now to put on the record in a public foreman what the value is or what I think the value is of PhilaComm share puts us in a position that is, I think, almost untenable, basically not fair.

COUNCILMAN NUTTER: I understand that. I didn't ask you about any one entity in particular. There are any number of entities on this sheet of paper. I mean, you've walked through the front end of the transaction. I'm just asking you does someone have the ability to then deconstruct it to understand where it's all going?

MR. HOLDER: In order to do that, I would have to look at the contracts, the relationships, the agreements that exist between, on the right side of the chart, Fairview, Pacesetter, Mesbit, I suppose, and City Cable Works, ultimately Urban Cable Works. You'd have to look at the PhilaComm component on the left side. And as I said, I think that gets into material that really is of a private nature.

COUNCILMAN NUTTER: Well, you have definitely made that point clear. What I would ask you to do when you're away from the table is at least give some consideration to the request so that we can better understand this prior to any final actions being taken here.

I do also want to at least want to inquire, during the course of the break and you took the time to try to put all this together, I'm intrigued as to given that some of this information was actually in a public document, as required as a part of your filing, why did you seemingly decide to torture this body by withholding --

MR. HOLDER: See, that's not fair,

Councilman. Had I known or --

COUNCILMAN NUTTER: Let me finish what I'm saying. By seemingly withholding the information or certainly I think it's easily characterized if we looked over the record there was not a sense of urgency to provide the information that you've subsequently now provided, which I appreciate. But it's clearly in another document which, if we had forever, any one of us could have searched through and tried to put together. But it certainly was not forthcoming. I guess I'm just trying to understand why would you go through that?

MR. HOLDER: I think that proves my point. Had I understood what you wanted, I could have come up with this number out of the 10-Q quite easily. I thought in sending the letter on February 4th I was responding to that which y ou had asked. If I understood that, I could have included this in the letter on February the 4th. I had no desire to hide it. You can't hide that which is public anyway.

COUNCILMAN NUTTER: All right. Obviously, I didn't ask the right question.

MR. HOLDER: Well, I didn't hear it. Put it on me. That's fine.

COUNCILMAN NUTTER: Mr. Chairman, at least on this particular issue, I think I got the information that I needed. Thank you.

COUNCILMAN CLARKE: Thank you, Councilman.

Anyone else on this panel to testify?

(No response.)

COUNCILMAN CLARKE: Any other questions by Committee for any of these witnesses?

MR. FOGARTY: No, I think we testified at the last session. We're just here to answer questions.

COUNCILMAN CLARKE: Councilman Nutter.

COUNCILMAN NUTTER: Mr. Chairman, as everyone seems to take great efforts to maintain their place in the record with regard to their position, notwithstanding what would appear at the moment to be the hearing coming to some amount of conclusion, I would at least reserve the right at a subsequent hearing to raise additional questions with regard to qualifications. I think there are still some outstanding information with regard to number of subscribers, households, paths, the true penetration rate for the franchise and there could be other matters that may arise at a subsequent time.

COUNCILMAN CLARKE: I'll amend any question. Any questions of these witnesses at this time?

(No response.)

COUNCILMAN NUTTER: Thank you, Mr. Chairman.

COUNCILMAN CLARKE: There being none, thank you so much for your testimony.

Any other witnesses to testify on this bill?

Please come to the witness table. State your name for the record.

MS. ROBINSON: Thank you. My name is Judith Robinson. I'm here to testify regarding the amendments to Bill No. 041071. Just a few items in regards to consumers. Thank you again for continuing this hearing because I understand that no one came to testify regarding consumers and public access. I just was wondering how does public access fit into this hearing and this transfer?

From what I understand, this has something that has been requested for many years, and a small portion of the cable fees were supposedly set aside in the name of having public access. It's been well over 20 years now, and that still has not happened as our cable rates increase over the years. So that's one issue I just want to raise.

In addition, when Mr. Wade back all those many years ago came to the body of City Council to get this franchise, African-American inclusion was very, very important at that time. So if it was important then, I know good and well it must be important all these many years later. So I want to know how just that fits into the plan also.

And just as a consumer, will this transaction in any way -- and this is kind a rhetorical question -- reduce the cable fees as they have increased tremendously over the years?

And those are my three areas of concern. Thank you very much.

COUNCILMAN CLARKE: You're welcome.

Mr. James, you want to take a shot at responding to those questions?

MR. JAMES: Thank you, Councilman. We appreciate the questions that are raised by the resident related to public access and also consumer service and rate regulation. I'll try to address them in somewhat the same order.

The issue of public access, as we have known since we've been doing rate regulation, has been a very important issue and has been raised at any opportunities. At every opportunity, and this opportunity not being anything different, what we are assuring those who have an interest in public access is that the franchisee who will be taking over the franchise if the transfer is approved has agreed to honor all the obligations that are in the existing the franchise which includes obligations to meet commitments for public access at the point in time the City decides to initiate public access by the formation of a non-profit foundation and the assignment of channels for public access purposes. So this particular transaction will not do anything to diminish that obligation, and the franchisee isn't looking to be excused from that obligation. It still remains an issue that the Administration and City Council has to reach some conclusion at some point in time. And we're working very hard to try to assemble as much information to better quantify the issues related is not bringing public access to Philadelphia.

COUNCILMAN CLARKE: So am I hearing that the responsibility to bring public access to the City of Philadelphia pretty much rests with the City of Philadelphia and the commitment based on the obligations in the franchise agreements for all the franchises, all four, are in effect in place. It's essentially our inability to get --

MR. JAMES: It still remains an issue between the City Council and the Administration to resolve that issue. It is not an issue with any of the cable franchisee. And this franchisee is applying, like other franchisees, continue to make their commitment to fulfill that obligation at the point in time that the City moves forward.

As far a consumer service, that's an issue that we are, as the responsibility department for oversight of that, very much interested in consumers concerns as far as the level of service that they're receiving, the rates that they pay, the product offering that they receive. We do feel that it's important to note that Time Warner who is applying to be the sole owner of the franchise does have a very good strong record as the No. 2 cable provider in the nation to be able to provide those services. We will continue and hopefully through the amendment that we instituted today increase the level of oversight as we look at the areas of consumer service. To the extent any consumer has a complaint, we make ourselves available through our cable office to try to work with the cable operator to rectify that on behalf of the subscriber.

The final issue as far as rate regulation, as you know rate regulation was deregulated at the federal level. We have no role other than the oversight role for compliance with the basic service.

COUNCILMAN CLARKE: There was also a question about minority participation based on the original franchisee and the potential diminishment of that.

MR. JAMES: The obligations that are in the franchise for participation as far as providing services and employment are retained in that and will be retained through the transfer. As Councilman Nutter requested earlier, we are going to prepare a report for the Chair and members of the Committee to document the franchisee's previous compliance with meeting those obligations.

COUNCILMAN CLARKE: Thank you.

Any questions?

(No response.)

COUNCILMAN CLARKE: Thank you, Mr. James.

We will be recessing until 9 a.m. on February 24th.

MR. DEBUNDA: May I address the Committee on that? I am unavailable on that date.

(Inaudible, not on microphone.)

COUNCILMAN CLARKE: I'm sorry. Sir, do you want that on the record?

MR. DEBUNDA: I just wanted to say that I am unavailable, but I guess that's not a reason to postpone. But the other thing I think would be helpful is there's been mentioned by Mr. Holder that there's a chance of resolving this issue, and I think time would help us with that; not lot time, some time.

And Number two, what would help us resolve it is get the rest of the information that we need, especially that settlement agreement which is part of the purchase price, the 34 million. We own 20 percent of the company it was paid to and we still can't get a copy of it. We don't know what it's for. And that, to me, we're going to be in the same position a week from now as far as our position unless we can actually get that document.

COUNCILMAN CLARKE: So noted.

MR. DEBUNDA: Thank you.

COUNCILMAN CLARKE: This Committee will be in recess until February 24th, 9 a.m. Thank you very much for your participation.

(Council recessed at 5:05 p.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of Wednesday, February 17, 2005, were reported fully and accurately by me, and that this is a correct transcript of the same.

RE: COMMITTEE ON PUBLIC PROPERTY AND
PUBLIC WORKS

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Lisa C. Bradley, RPR