

CAUSE NO. D-I-GN-09-002028

DAVID P. GRIFFIN  
Plaintiff

Vs

CITY OF AUSTIN, RONDELLA HA WKINS,  
individually and as an employee of the City of  
Austin, PUBLIC ACCESS COMMUNITY  
TELEVISION a/kJa CHANNEL AUSTIN,  
GARRY WILKISON and LINDA LITOWSKY,  
individually and as Executives of Public Access  
Community Television, CATHY BEAUDOIN,  
JACKIE GOODMAN, CELIA HUGHES,  
EMANUEL, LIMEL PALOMU, DANIEL  
SCARDINO, DOBERAH L. HILL, TRENA  
DENLEY, HELEN CAUDILL, individually and  
as Board Members of Public Access Community  
Television,  
Defendants.

§ IN THE DISTRICT COURT  
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§ THE COUNTY OF TRAVIS  
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§ 126TH JUDICIAL DISTRICT  
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**AFFIDAVIT OF DAVID P GRIFFIN**

THE STATE OF TEXAS §  
§

COMES now DAVID P. GRIFFIN, being first duly sworn and upon oath according to law, deposes and says:

1. I am a individual over the age of 18 years and a party to the within litigation. I voluntarily make this statement under oath.

2. I am a resident of 630 North Nugent Avenue Johnson City Texas, 78636

3. **Exhibit A. Time Warner Cable Television Franchise Fee Audit, Part I**

**Issued: April 2008** The City of Austin granted Austin CableVision a cable television franchise in 1981. The Austin CableVision franchise expired and was renewed in July 1996 with Austin CableVision's successor, Time Warner Cable Television (TWC), operating under the franchise agreement. Under City Ordinance Number 960613-A, this cable franchise agreement runs for fifteen years and will expire in August 2011. The franchise agreement between the City of Austin and TWC requires a payment of five percent of gross revenue derived within the franchise area. A 35 cent monthly fee per customer to fund the

public, educational and governmental (PEG) access channels is also paid by TWC to the City. These payments from TWC are to compensate the City of Austin for the use of the public rights-of-way. Legislative changes made in 2005 change the franchising authority from municipalities to the Public Utility Commission of Texas (PUCT) so TWC will be operating under a State franchise when the current franchise agreement between Austin and TWC expires. The City of Austin will still continue to receive the five percent franchise fee from TWC but the PEG fee will change from 35 cents per subscriber per month to one percent of gross revenues and these funds will no longer be allowed to fund access channel operating costs. In reviewing TWC's subscriber data to determine if the franchise fee and PEG fee payments are correct, we discovered that TWC did not consistently update their subscriber database to reflect a series of annexations following the 1996 franchise agreement. Our geocode analysis identified 12,139 miscoded subscriber accounts within the full-purpose annexed area that were not charged fees and there were 5,677 subscriber accounts in the extraterritorial jurisdiction (ETJ) that were erroneously charged fees. We also found that the City had properly sent annexation notifications to TWC. As a result, TWC owes the City \$1,072,148 in fees and interest. In addition, a significant number of the accounts identified are active accounts with TWC, and should continue to generate additional revenue for the City each month that they remain customers.

#### 4. **Exhibit B. Time Warner Cable Television Franchise Fee Audit, Part II**

**Issued: June 2008** This report presents the results of the Time Warner Cable Franchise Fee Audit, Part II. The City of Austin granted Austin CableVision a cable television franchise in 1981. The Austin CableVision franchise expired and was renewed in July 1996 with Austin CableVision's successor, Time Warner Cable Television (TWC), operating under the franchise agreement. Under City Ordinance Number 960613-A, this cable franchise agreement runs for fifteen years and will expire in August of 2011. The franchise agreement between the City of Austin and TWC requires a payment of five percent of gross revenue derived within the franchise area. A 35 cent monthly fee per customer to fund the public, educational and governmental (PEG) access channels is also paid by TWC to the City. These payments from TWC are to compensate the City of Austin for the use of the public rights-of-way. In reviewing TWC's financial data to determine if the franchise fee and PEG fee payments are correct, we found that: PEG fees were excluded from the calculation of gross revenue subject to the franchise fee by TWC resulting in a liability to the City of \$524,386. Bad debt expense was improperly apportioned resulting in a liability to the City of \$248,511. TWC did not pay interest on the franchise fees for a prior period adjustment made related to advertising revenue resulting in a liability to the City of \$71,210. Advertising revenue was under reported resulting in a liability to the City of \$18,586. Other Revenues were overstated by TWC resulting in an overpayment of \$198,703.

The net liability to the City is \$663,990

#### 5. Exhibit C.

Newspaper Austin Business Journal dated 9/22/06.

Newspaper Austin American-Statesman, March 15 2008.

Newspaper report November 15, 2009.

This will give the court an outside look of a current events and history of public access community television.

6. Exhibit D. AMENDMENT NO 1 A WHAT HE IN A ROW to the contract for public access community television

7. Exhibit E. Open records request for Stephan Wray, this report indicates how the city has not been doing their due diligence in maintaining public access communications for years. The dollar spent in this report shows the city has been spending very little money to maintain public access as indicated in the news articles listed above.

8. Exhibit F. Austin community technology and communication Council meeting.

Minutes of the meeting from February 13 2008.

Minutes of the meeting for March 12, 2008

Minutes for the meeting August 13, 2008

Minutes of the meeting Wednesday, October 8 2008

Minutes of the meeting Wednesday, June 14, 2009

In these minutes of meetings you'll find many complaints by citizens. Statements made by management of public access. Statements of Rondella Hawkins who has complete control over public access.

9. Exhibit F. Examples of open records request, handwritten notes trying to explain actions are of defendants. Incomplete records of omissions of insurance documents required by the contract. In open records requests asked for wiring can be done in building known as public access. No records were available but memorandum to Rondella Hawkins dated May 14, 2008 clearly states that CTM group would get \$150,000 to wire the index is building. This was omitted from my open records request as many other facts were.

10. Exhibit G. Affidavit stating attack on David P. Griffin by Ray Guy a friend of Linda's in Gary's after speaking at a telecommunications Council meeting on March 12 2008

11. Exhibit H. A letter to Senator Kirk Watson asking him if he would consider hosting a meeting between the two parties. He made no response this is the political clout that public access in the city of Austin wield against me when a state senator can be intimidated not to respond to a simple request.

By, \_\_\_\_\_

**DAVID P. GRIFFIN**

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this  
\_\_\_\_\_ Day of December 2009, to which witness my hand and seal.

NOTARY PUBLIC