



***Monroe County Legislature
Democratic Legislative Office***

October 5, 2011

Charles H. Stuart, President
Upstate Telecommunications
CityPlace, Suite 8100
50 West Main Street
Rochester, NY 14614

Dear Mr. Stuart:

We are writing to you regarding concerns with current contracts between Upstate Telecommunications Corporation LDC (UTC) and MGMT Services, LLC, a management consultant firm run by Richard Mackey, and your counsel, Michael Townsend.


Several unanswered questions remain concerning the legality about the incorporation and initial start of up UTC, and it appears that both Mr. Mackey and Mr. Townsend may have personally benefitted from their involvement with the adoption of the original contract in 2004.

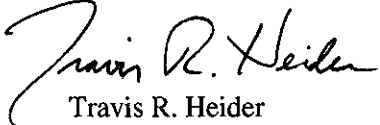
As we are sure you are aware, following the release of his audit "Monroe County: Use of a Local Development Corporation to Contract for a County's Information Technology System," New York State Comptroller Thomas P. DiNapoli forwarded his findings to the Attorney General's Office.


While the Attorney General's office is conducting their investigation of these contracts and expenditures, we hereby request that UTC suspend their contacts with Mr. Mackey, through his consultant firm MGMT, LLC, and Mr. Townsend, and also remove Mr. Townsend from the Governance Committee.

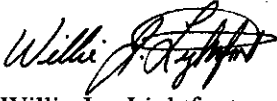
If you wish to discuss this matter further, please feel free to the Democratic Legislative Office at (585) 753-1940. We urge the entire board to seriously consider this request, and take action prior to or at the October 20th meeting of the UTC Board.


Sincerely,



Carrie M. Andrews
Assistant Minority Leader



Travis R. Heider
Legislator – District 14

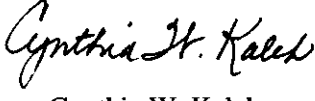

Paul E. Haney
Legislator – District 23



Willie Joe Lightfoot
Legislator – District 27



Calvin Lee, Jr.
Assistant Minority Leader



Vincent J. Esposito
Legislator – District 16

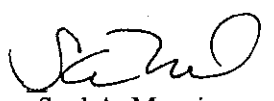

Joshua Bauroth
Legislator – District 24


Cynthia W. Kaleh
Legislator – District 28


Richard A. Beebe
Legislator – District 6


Glenn J. Gamble
Legislator – District 22


C. Stephen Eckel
Legislator – District 26


Saul A. Maneiro
Legislator – District 29



Monroe County Legislature

PAUL E. HANEY
LEGISLATOR- DISTRICT 23

PAUL E. HANEY
LEGISLATOR - DISTRICT 23
424 BROADWAY, SUITE B
ROCHESTER, NEW YORK 14607
OFFICE (585) 753-1940
HOME (585) 232-3858

October 5, 2011

William Taylor, Special Counsel to the County Executive
100 County Office Building
39 West Main Street
Rochester, New York 1461

Dear Mr. Taylor:

I am writing to you regarding some pressing legal concerns regarding the contracts between the County and Upstate Telecommunications Corporation LDC (UTC). On October 1st, the Democrat & Chronicle reported that one of the original directors of UTC, County Court Judge Vincent Dinolfo, did not know that he was ever a member of the UTC board until 2011. The article goes on further to say a second board member (of the three original members), Kenneth Pink, asserted that he does not recall participating in any meetings, votes or other proceedings of the UTC board. As Special Counsel to the County Executive, I believe you are in the best position to address my concerns.

I find this information very troubling. It brings into question the validity of any contracts signed by UTC with Monroe County, or any other firm. According to publicly released documents, Mr. Dinolfo, Mr. Pink and Mr. Townsend, the lawyer who filed the UTC incorporation papers with the state, were listed as the board members of UTC as of June 1st 2004. However, by February 5th, 2005 Mr. Martin Lawson is appears as the signatory and the president of UTC in their contract with Monroe County. I also find it very concerning that Richard Mackey, the former deputy County Executive, appears to have obtained a significant consulting contract with UTC a short time after retiring from the County, where one of his departing acts was supporting the County's original contract with UTC.

Because two of the three original Board members of UTC are disclaiming any knowledge of their purported Board membership, we currently lack any evidence that UTC held any meetings or conducted any official business between June of 2004 and February 5, 2005. Specifically, the disclaimers of two of the three original Board members suggest that:

1. No Board meetings were held;
2. No Bylaws were legally adopted for UTC;
3. Mr. Pink and Mr. Dinolfo never resigned from the Board of UTC (if they didn't know they were on it, they couldn't have resigned from it: and



4. Lacking legally adopted Bylaws, the County Executive had no power to appoint successors to the original Board members since that power flows from the purported Bylaws and not the Articles of Incorporation.

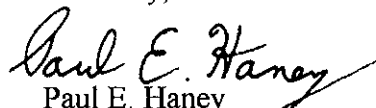
If this is the case, there are serious questions created about the validity of the contracts between UTC and the County and UTC and its sub-contractors. That, of course, brings into question millions of dollars in county payments to UTC (\$34.3 million according to the payment Schedule that was included in the County's contract with UTC as Attachment B.1) as well as the County's entire IT system.


Therefore, I am requesting a written legal opinion from you as Special Counsel to the County Executive who signed the contracts to address the following: if the original UTC board never formally adopted bylaws, which gave the County Executive appointing authority to the board and if Dinolfo and Pink never resigned from the Board:


- 1) Would the Board, as appointed by County Executive Brooks (specifically Mr. Lawson as purported President of the Board), have authority to sign any contracts, including the one with the County?
- 2) If the board, and board President, did not have such authority, are any of the contracts signed in 2005 valid?
- 3) If Mr. Dinolfo and Mr. Pink were never made aware that they were board members of UTC, thus never resigning from such positions, would they in fact still be considered Board members today?
- 4) Under what legal authority was the County Executive operating when she appointed UTC board members to replace Messrs. Townsends, Pink and Dinolfo?
- 5) Did anyone submit a copy of the UTC by-laws to Monroe County and, if so, who was that person and did the person submitting the by-laws claim they were adopted by the UTC board which consisted of Dinolfo, Pink and Townsend?

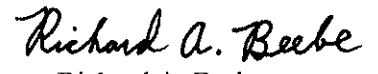
I respectfully request that you provide this written opinion no later than the close of business on October 19. If you are unable to address any questions contained in this letter, please provide a brief explanation as to why that particular question cannot be answered. If you have any questions, please feel free to contact me or the Democratic Legislative Office at (585) 753-1940. In advance, thank you for your prompt attention to this request. I look forward to hearing from you.

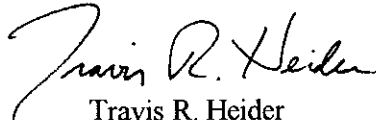
Sincerely,



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Legislator - District 23



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Saul A. Maneiro
Legislator – District 29

PEH/jlr

cc: David Van Varick, County Attorney
Hon. Maggie Brooks