

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JULY 2, 2002**

Call to Order

The 1889th meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King
Larry Lancaster

Brian Newman

Staff present:

Gary Firestone,
City Attorney

John Gessner,
Planning Director

Alice Rouyer,
Community Development Dir.

JoAnn Herrigel,
Program Specialist

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

Mayor Bernard recognized Tracy Cook for her years of service to the community. Cook was one the residents responsible for establishing the Linwood Neighborhood District Association and served as a Park and Recreation Board member, Interim City Councilor, and Planning Commissioner. Donald Hammang, Planning Commission Chair, Mike Miller, Planning Commission member, and several friends and neighbors expressed their appreciation.

CONSENT AGENDA

It was moved by Councilor Newman and seconded by Councilor Lancaster to move other business item B, AT&T Comcast Merger, to the consent agenda. Motion passed unanimously among the members present.

It was moved by Councilor Newman and seconded by Councilor Lancaster to adopt the consent agenda that included:

1. City Council Minutes of June 18, 2002;
2. Nonrepresented Employees Fiscal Year 2002 – 2003 Salary Schedule and Negotiated Salary Schedule with Represented Employees;
3. Renewal of Municipal Court Judge Contract;
4. Resolution 18-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute Certain Contracts for Fiscal Year 2002 – 2003; and
5. Resolution 19-2002: A Resolution Consenting, with Conditions, to the Change of Control of AT&T Corp., the Indirect Parent Company of TCI Cablevision of Georgia, Inc.

Motion passed unanimously among the members present.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS**Letter of Appreciation**

Mayor Bernard read a letter from Nancy Thornton, Milwaukie Community Club, thanking Jay Saatkamp, Operations Supervisor Water Division, for responding quickly and courteously to a problem at the building.

Amend Ordinance Relating to Water, Sewer, and Storm Franchise Fee

Rouyer presented the staff report in which the City Council was requested to adopt an ordinance amending Municipal Code Chapter 3.10 by imposing a street maintenance franchise fee on the water, sewer, and storm funds.

It was moved by Councilor Newman and seconded by Councilor Lancaster to read the ordinance amending Municipal Code Chapter 3.10 for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor King and seconded by Councilor Lancaster to read the ordinance amending Municipal Code Chapter 3.10 for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance amending Municipal Code Chapter 3.10. Motion passed unanimously among the members present.

ORDINANCE NO. 1905:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, IMPOSING A FRANCHISE FEE ON THE WATER, SEWER AND STORM DRAINAGE PUBLIC UTILITIES OPERATING WITHIN THE CITY, CLASSIFYING THE FRANCHISE FEE NOT SUBJECT TO THE PROPERTY TAX LIMITATIONS OF ARTICLE XI, SECTION 11(B) OF THE OREGON CONSTITUTION.

Update on House at 21st Avenue and Lake Road

Gessner reported the owner of the house temporarily stored at 21st Avenue and Lake Road, Rich Peterson, has submitted the necessary applications to place the house permanently on its current site. However, he has not responded to code compliance citations and will report to Milwaukie Municipal Court this month. Once staff deems the land use applications complete, they will go forward to the Planning Commission in

August. He noted Peterson had failed to comply with the original conditions under which he was allowed to temporarily store the house at that site.

Mayor Bernard understands Peterson has not actually purchased any property from the railroad, and he is concerned taxpayers might have to pay demolition costs. He suggested Peterson pay into a fund that would cover the cost of demolition if that becomes necessary. He feels the owner needs to be pushed in order for anything to happen.

Firestone will review the conditions of temporary placement to determine what is allowable. The City could order the house removed or require Peterson to post a bond.

Council members agreed the issue needs to be resolved as soon as possible.

Update on Springwater Trail

Councilor Newman announced the groundbreaking ceremony on July 19 at 10:00 a.m.

Mayor Bernard announced the City Council would meet in executive session pursuant to ORS 192.660 to discuss potential litigation.

ADJOURNMENT

It was moved by **Councilor King** and seconded by **Councilor Lancaster** to adjourn the meeting. Motion passed unanimously among the members present.

Mayor Bernard adjourned the meeting at 6:30 p.m.

Pat DuVal

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
JULY 2, 2002**

MILWAUKIE CITY HALL
10722 SE Main Street

1889TH MEETING

REGULAR SESSION - 6:00 p.m.

I. CALL TO ORDER
Pledge of Allegiance

II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Recognize Tracy Cook for Community Service

III. CONSENT AGENDA *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*

A. City Council Minutes of June 18, 2002

✓ **B. Nonrepresented Employees Fiscal Year 2002-2003 Salary Schedule and Negotiated Salary Schedule with Represented Employees**

✓ **C. Renewal of Municipal Court Judge Contract**

✓ **D. Annual Purchase Orders Exceeding \$25,000 -- Resolution**

IV. AUDIENCE PARTICIPATION *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*

V. PUBLIC HEARING *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

None scheduled

VI. OTHER BUSINESS *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

✓ **A. Code Amendment Relating to Water, Sewer and Storm Franchise Fee – Ordinance (Rouyer)**

✓ **B. AT&T Comcast Merger -- Resolution (Herrigel)**

VII. INFORMATION

VIII. ADJOURNMENT

EXECUTIVE SESSION -- *At the end of the regular meeting, the Council may hold an Executive Session under the authority of Oregon Revised Statutes 192.660 as needed.*

For assistance/service per the Americans with Disabilities Act (ADA), dial TDD 786-7555.

The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

CONSENT AGENDA

III

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JUNE 18, 2002**

Call to Order

The 1888th meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King

Larry Lancaster

Staff present:

Mike Swanson,
City Manager

John Gessner,
Planning Director

Gary Firestone,
City Attorney

JoAnn Herrigel,
Program Specialist

Larry Kanzler,
Police Chief

Brion Barnett,
Associate Engineer

Alice Rouyer,
Community Development
Director

Kenneth Kent,
Associate Planner

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard recognized Estele Harlan upon her retirement as garbage hauler consultant. John Kaufman was congratulated on his retirement as Clackamas County Clerk and wished well on his new job as Multnomah County Elections Director.

CONSENT AGENDA

It was moved by Councilor King and seconded by Councilor Lancaster to approve the Consent Agenda that included:

1. City Council Minutes of June 3 & 4, 2002;
2. Resolution 13-2002: A Resolution of the City of Milwaukie, Oregon, Authorizing the City Manager to Sign an Intergovernmental Agreement (IGA) with the Metropolitan Area Communications Commission (MACC). The IGA Allows MACC to Administer the Day-to-Day Operational and Regulatory Aspects of Milwaukie's Cable Television Franchise with AT&T;
3. Amendment of Centennial Consultant Contract with Metropolitan Group; and
4. Award Contract for Downtown Traffic Plan.

Councilor King referred to the City Council work session minutes page 4 and said her comment should read "develop a communication plan to more effectively communicate goals and purposes with other civic leaders around the community."

The motion to adopt the consent agenda with the correction to the work session minutes passed unanimously among the members present.

AUDIENCE PARTICIPATION

PUBLIC HEARING

2002 – 2003 Budget Hearing and 2001 – 2002 Supplemental Budget

Mayor Bernard called the public hearing on the fiscal year 2002 – 2003 budget to order at 6:05 p.m.

The purpose of the hearing was to consider an ordinance and resolutions required to be enacted prior to the beginning of fiscal year 2002 – 2003. Mayor Bernard reviewed the conduct of the hearing.

Swanson provided the staff report in which the City Council was requested to adopt a resolution adopting the 2002 – 2003 budget, an ordinance electing to receive state revenue sharing, a resolution certifying services provided for state revenue sharing, and a resolution adopting a supplemental budget for fiscal year 2001 – 2002. The total budget approved by the Budget Committee is \$37,841,823.

Correspondence: None.

Testimony: None.

Questions of clarification: **Councilor Lancaster** noted the taxes were reduced for the Public Safety Building debt service and asked when the bond would retire.

Swanson replied the bond would retire in 2011.

Mayor Bernard closed the public testimony portion of the hearing at 6:12 p.m.

It was moved by Councilor King and seconded by Councilor Lancaster to adopt the resolution adopting the 2002 – 2003 budget, making appropriations, and levying and categorizing taxes. Motion passed unanimously among the members present.

RESOLUTION NO. 14-2002:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, CLACKAMAS COUNTY, OREGON, TO ADOPT THE BUDGET, MAKE APPROPRIATIONS, AND DECLARE AND CATEGORIZE THE AD VALOREM TAX LEVY FOR FISCAL YEAR 2002 – 2003.

It was moved by Councilor King and seconded by Councilor Lancaster to read the ordinance declaring the City's election to receive state revenues for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to read the ordinance declaring the City's election to receive state revenues for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance declaring the City's election to receive state revenues. Motion passed unanimously among the members present.

ORDINANCE NO. 1903:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIWLAUKIE, OREGON, DECLARING THE CITY'S ELECTION TO RECEIVE STATE SHARED REVENUES.

It was moved by Councilor King and seconded by Councilor Lancaster to adopt the resolution certifying services provided for state revenue sharing. Motion passed unanimously among the members present.

RESOLUTION 15- 2002:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CERTIFYING SERVICES PROVIDED FOR STATE REVENUE SHARING.

It was moved by Councilor King and seconded by Councilor Lancaster to adopt the resolution adopting a supplemental budget and amending appropriations for fiscal year 2001 – 2002. Motion passed unanimously among the members present.

RESOLUTION 16-2002:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ADOPT A SUPPLEMENTAL BUDGET AND AMEND APPROPRIATIONS FOR FISCAL YEAR 2001 – 02.

Homewood Park Master Plan, CPA-02-01 and CPA-02-02

Mayor Bernard called the public hearing on the application filed by the City of Milwaukie and the Hector Campbell Neighborhood Association to incorporate the Homewood Park Master Plan as an ancillary document to the Comprehensive Plan and to amend the land use designation to order at 6:18 p.m.

The request was considered by the Planning Commission at its April 23, 2002 public hearing, and the Commission recommended approval of the amendments. Mayor Bernard announced this was a de novo hearing, and all persons wishing to speak on the proposal would be recognized by City Council. The testimony would be used by the City Council in coming to a decision on the proposal.

The purpose of the hearing was to consider the Milwaukie Planning Commission's recommendation to approve the request to incorporate the Homewood Park Master Plan and amend the Comprehensive Plan map. The applicable standards to be considered included Comprehensive Plan Chapter 2 – Plan Review and Amendment Process, Policy 7, Objective 1 and Milwaukie Zoning Ordinance Sections 1011.4 – Major Quasi-Judicial Review and 1011.5 – Legislative Actions.

Mayor Bernard reviewed the order of business. The applicant must prove that the amendment proposal conforms with all applicable criteria of the Comprehensive Plan and Zoning Ordinance. All testimony and evidence must be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail precludes an appeal based on that criterion or issue. Failure to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing are those who submit written comments or testify and sign the City Council hearing sign-up sheet on the information table in the hall. Mayor Bernard reviewed the conduct of the hearing.

Conflicts of interest and site visits: **Councilor King** and **Mayor Bernard** had visited the site. No conflicts of interest were declared.

There were no challenges to any Council member's impartiality or ability to participate in the decision.

Jurisdictional issues: There were no objections to the Council's jurisdiction to consider the matter.

Staff report: **Kent** presented the staff report in which the City Council was requested to adopt an ordinance amending the Comprehensive Plan by incorporating the Homewood Park Master Plan as an ancillary document and changing the land use designation from

low and medium density residential to public. The proposal has neighborhood support, and the applicant has demonstrated it can meet the approval criteria. The Planning Commission held a public hearing on April 23, 2002 and recommends the City Council approve the application.

Correspondence: None.

Testimony in support: None.

Testimony in opposition: None.

Neutral testimony: **Carolyn Troychak**, 10903 SE Home Avenue, Milwaukie, owns property adjacent to park site. She asked if the zone change was only within the park boundary.

Kent responded that was correct, and the change to the land use designation would not affect her property.

Mayor Bernard closed the public testimony portion of the Comprehensive Plan amendment at 6:25 p.m.

Council discussion: **Councilor King** commented this was one of the first properties acquired to fulfill the community goal of increasing public parks and open spaces, and she is pleased to see its development progressing.

Council decision:

It was moved by Councilor King and seconded by Councilor Lancaster to read the ordinance adopting the Homewood Park Master Plan as an ancillary document to the Comprehensive Plan and changing the land use designation from low and medium residential to public for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to read the ordinance adopting the Homewood Park Master Plan as an ancillary document to the Comprehensive Plan and changing the land use designation from low and medium residential to public for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance adopting the Homewood Park Master Plan as an ancillary document to the Comprehensive Plan and changing the land use designation from low and medium residential to public. Motion passed unanimously among the members present.

III. A. 6

ORDINANCE NO. 1904:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1437, THE COMPREHENSIVE PLAN BY ADOPTING THE HOMEWOOD PARK MASTER PLAN (CPA-02-01) AS AN ANICLLARY DOCUMENT AND BY CHANGING THE LAND USE DESIGNATION OF HOMEWOOD PARK FROM LOW AND MEDIUM DENSITY RESIDENTIAL TO PUBLIC (CPA-02-02).

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

Education Service District Post Occupancy Traffic Study

Mayor Bernard called the public hearing to order at 6:30 p.m.

Barnett presented the staff report in which the City Council was requested to review the traffic study submitted by Kittleson & Associates, Inc. on behalf of the Clackamas Education Service District (ESD). The applicant was required to perform a post occupancy study after the first year to determine if there were any problems at the site access points at Lake Road and 37th Avenue. The study found there were fewer trips generated than originally assumed during the application process, and no other problems identified. There were some resident reports of drivers illegally turning left from the site onto 37th Avenue.

Staff concurs with the Kittleson and Associates' findings that no further mitigation is required. ESD Director Campbell will draft a reminder to staff that turning left onto 37th Avenue is not allowed.

Mayor Bernard received comments that drivers are passing in the bike lane and suggested trimming branches near the signs might be required.

Councilor Lancaster thought enforcement would be most effective.

There were no further Council comments, and **Mayor Bernard** closed the public hearing at 6:35 p.m.

OTHER BUSINESS

Intergovernmental Agreement for State Transportation and Growth Management Grant

Gessner presented the staff report in which the City Council was requested to authorize the city manager to sign the agreement with the Oregon Department of Transportation

(ODOT) to implement a grant to study and plan the north industrial area. The City was awarded a \$116,000 grant for this project which he believes has great value in meeting the Community Goals. He briefly commented on the terms and conditions, scope of work, and employment base agreements.

Councilor King asked if there were any environmental issues in that area.

Gessner said there have been concerns, and an essential element of the study is to advise the City on environmental issues related to this development.

Councilor King requested updates on how this project and the downtown traffic management study is being coordinated.

Councilor Lancaster asked if these grant funds have already been dedicated in light of the state budget crisis.

Gessner reported the funds have already been budgeted. This is a one-year project with 7 tasks, one of which is to identify the regulatory environment. Issues, such as environmental cleanup, will likely be addressed at the time of development and be the burden of the developer.

It was moved by Mayor Bernard and seconded by Councilor King to authorize the City Manager to sign an intergovernmental agreement with ODOT to implement a \$116,405 grant for studying and planning the north industrial area. Motion passed unanimously among the members present.

Proposal to Annex the City to Clackamas County Fire District No. 1

Swanson provided the staff report in which the City Council was requested to adopt a resolution proposing annexation of the City to Clackamas County Fire District No. 1 (CCFD#1) for the purpose of receiving services from the District. The City currently contracts with the District for services. Milwaukie appropriates funds annually to purchase fire prevention and education services. He understands that 21 of the 23 Milwaukie firefighters that were transferred to the District are still there and have been well represented among those promoted.

The resolution begins the process leading to a November election to determine if the City will annex to the District. The reason for proposing this action is to assist the City in what Swanson predicts will be critical budget problems in fiscal year 2003 - 2004. The funds now allocated to pay the District for contract services would be freed up to help fund services currently being provided in the general fund. Property owners would be taxed directly by the District at its permanent tax rate of \$2.40 per \$1,000 valuation. Annexation would make Milwaukie a full partner in the District, and City residents would be eligible to run for at-large Board positions.

This proposed resolution is a petition to the District Board to annex the entire City to the District. The Board will make its decision on August 6, and, if approved, both the Milwaukie City Council and Fire District Board will place measures on the November ballot. District voters and Milwaukie voters must both approve the annexation in order for it to take place.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to adopt the resolution proposing annexation of the City to Clackamas Fire District No. 1 for the purpose of receiving services from the District. Motion passed unanimously among the members present.

RESOLUTION NO. 17-2002:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, PROPOSING ANNEXATION OF THE ENTIRE CITY TO CLACKAMAS FIRE DISTRICT NO. 1, FOR THE PURPOSE OF RECEIVING SERVICES FROM THE DISTRICT.

Board and Commission Appointments

Mayor Bernard, with the consensus of Council, made the following advisory board appointments: Teresa Bresaw to the Planning Commission; Sherri Dow to the Park and Recreation Board; and Dolly Macken-Hambright and Roger Cornell to the Traffic Safety Board.

Other

Mayor Bernard thanked 2002 Festival Daze Chair Sharon Van Horn and all those who worked on the event.

ADJOURNMENT

It was moved by Councilor Lancaster and seconded by Councilor King to adjourn the meeting. Motion passed unanimously among the members.

Mayor Bernard adjourned the meeting at 6:55 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Mary Rowe, Human Resources Director

Subject: Non-represented Employees fiscal year 2002-2003 Salary Schedule and Negotiated Salary Schedule with Represented Employees

Date: June 5, 2002

Action Requested

The City Council adopts the City of Milwaukie, 2002-2003 Pay Table, with salary schedule effective July 1, 2002 for non-represented employees. Non-represented employees includes, management, confidential and seasonal employees. Salaries for bargaining unit members are determined by contract. Attached is the proposed Pay Table showing the salary ranges with a 3% COLA, (Cost of Living Adjustment) for all ranges.

Background

During last year's contract negotiations, AFSCME agreed to a 3% Cost of Living Adjustment (COLA) for each of the 3 years of their contract. MPEA (Milwaukie Police Employees Association) agreed to 3% for the first year and to reopen negotiations for the cost of living increase portion of the contract for subsequent years. Based on prior discussions and agreements, it appears that the actual rate of the COLA for MPEA for this year will be 3%, although at this time it has not been finalized. Therefore a 3% increase for non-represented employees will maintain integrity of the current compensation system. If non-represented employees COLA is less than represented employees, compression takes place between the salary ranges for supervisors and their subordinates. The pay system for the City of Milwaukie was established with a 5% differential between ranges. If different groups of City employees receive COLA's of varying amounts than the difference between the ranges will become compressed.

Fiscal Impact

The 3% COLA was calculated into the personnel services costs set forth in the proposed budget approved June 18th, 2002. Therefore there is no additional impact to the budget from this proposal.

Work Load Impacts

There would be nominal impact to input salary adjustments.

Alternatives

Grant any amount less than 3% COLA for non-represented employees which will result in wage compression between represented employees and non-represented employees.



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Pat DuVal, City Recorder
Subject: Contract for Municipal Court Judge Services
Date: June 12, 2002

Action Requested

Authorize the City Manager to sign a contract with Ron Gray extending municipal court judge services for an additional year.

Background

By City Charter, the municipal court judge is the judicial officer of the city and is appointed directly by the City Council. The Milwaukie Municipal Court Judge handles cases involving building code violations; City Ordinance civil infractions such as zoning violations; and all traffic infractions under the State Motor Vehicle Code. The position requires an average of 15 to 20 hours per month on the bench plus several hours per month preparing and reviewing court-related material.

Gray was selected in a competitive process in 1988 and again in 1995. The current contract with Gray for municipal court judge services expires June 30, 2002. There are no changes to the previous year's contract requested by either Gray or the City.

Fiscal Impact

The amount of the contract is \$18,000 and is budgeted for fiscal year 2002 – 2003.

Concurrence

The agreement has been approved as to form by the City Attorney.

CITY OF MILWAUKIE, OREGON

PERSONAL SERVICES CONTRACT

THIS AGREEMENT made and entered into this 2nd day of July 2002, by and between the CITY OF MILWAUKIE, a municipal corporation of the State of Oregon, hereinafter called CITY, and Ronald L. Gray hereinafter called CONTRACTOR.

WITNESSETH:

WHEREAS, CITY has need for the services of an attorney with the particular training, ability, knowledge, and experience possessed by CONTRACTOR, and

WHEREAS, City Council has determined that Ronald L. Gray is qualified and capable of performing the professional services as CITY does hereinafter require, under those terms and conditions set forth:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. SERVICES TO BE PROVIDED:

CONTRACTOR agrees to perform the services of Municipal Court Judge for the City of Milwaukie, Clackamas County, Oregon.

2. EFFECTIVE DATE AND DURATION:

This agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on June 30, 2003. All work under this agreement shall be completed prior to the expiration of this agreement.

3. COMPENSATION:

CITY agrees to pay CONTRACTOR up to \$1,500 per month for performance of those services provided herein. CITY also agrees to reimburse CONTRACTOR for necessary and normal expenses that are incident to performance of the services specified herein.

Payments by CITY to CONTRACTOR shall be based upon the following applicable terms:

- i. Payment will be made in monthly installments of \$1,500 payable on or before the last working day of each calendar month.
- ii. City shall establish an annual budgeted amount of \$500.00 each fiscal year for pro tem judge costs. Any such cost shall be charged against this amount until \$500.00 has been expended in any fiscal year. Any pro tem costs above this amount shall be charged against the monthly compensation paid to the CONTRACTOR.

- iii. The CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. ASSIGNMENT/DELEGATION:

Neither party shall assign, sublet or transfer any interest in or duty under this agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If CITY agrees to assignment of tasks to a subcontractor, CONTRACTOR shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by CITY of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and CITY.

5. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR:

CONTRACTOR certifies that:

- i. CONTRACTOR acknowledges that for all purposes related to this Agreement, CONTRACTOR is and shall be deemed to be an independent contractor as defined by ORS 670.700, and not an employee of CITY, shall not be entitled to benefits of any kind to which an employee of CITY is entitled and shall be solely responsible for all payments and taxes required by law; and, furthermore, in the event that CONTRACTOR is found by a court of law or any administrative agency to be an employee of CITY for any purpose, CITY shall be entitled to offset compensation due, to demand repayment of any amounts paid to CONTRACTOR under the terms of this Agreement, to the full extent of any benefits or other remuneration CONTRACTOR receives (from CITY or third party) as a result of said finding and to the full extent of any payments that CITY is required to make (to CONTRACTOR or to a third party) as a result of said finding.
- ii. The undersigned CONTRACTOR hereby represents that no employee of the City of Milwaukie, or any partnership or corporation in which a CITY employee has an interest, has or will receive any remuneration of any description from CONTRACTOR, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

If this payment is to be charged against Federal funds, CONTRACTOR certifies that he is not currently employed by the Federal Government and the amount charged does not exceed his normal charge for the type of service provided.

CONTRACTOR and its employees, if any, are not active members of the Oregon Public Employees Retirement System and is not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- iii. CONTRACTOR certifies that it currently has a City of Milwaukie Business License or will obtain one prior to delivering any services under this agreement.

III. C. 4

6. INDEMNIFICATION:

CITY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a CONTRACTOR's work by CITY shall not operate as a waiver or release.

CONTRACTOR agrees to indemnify and defend City of Milwaukie, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the CITY and its employees. Such indemnification shall also cover claims brought against the City of Milwaukie under state or federal worker's compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

It is understood by Contractor that in the event Contractor through their action or inaction injures, damages or otherwise diminishes the value of property owned by the City (beyond that incident to normal wear and tear), Contractor agrees to pay City upon written demand by the City, the amount necessary to restore, repair or replace said property. Contractor further agrees that in the event City has monies owing to Contractor on this project or otherwise, Contractor agrees City may retain any amount City reasonably deems necessary to cover any costs associated with the damage, injury or diminished value until Contractor either pays the City or other arrangements satisfactory to the City are made. In the event said arrangements cannot be made within thirty (30) days of the City's written notice, the City may set-off any or all of the disputed amount from any amounts owed.

7. INSURANCE:

CONTRACTOR shall maintain Professional Liability Insurance as required by the Oregon State Bar. Proof of insurance shall be provided before work commences to:

City Recorder
City of Milwaukie
3200 SE Harrison
Milwaukie, OR 97222

Ten days cancellation notice shall be provided CITY by Certified Mail to the City Recorder at the address listed above in event of cancellation or non-renewal of the insurance.

8. METHOD OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS:

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

CITY:

Accounts Payable
City of Milwaukie
10722 SE Main
Milwaukie, Oregon 97222

CONTRACTOR:

Ronald L. Gray
814 7th Street #6
Oregon City, OR 97045

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payment shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

9. MERGER:

This writing is intended both as a final expression of the agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the agreement. No modification of this agreement shall be effective unless and until it is made in writing and signed by both parties.

10. TERMINATION WITHOUT CAUSE:

At any time and without cause, CITY shall have the right in its sole discretion, to terminate this agreement by giving written notice to CONTRACTOR. If CITY terminates the contract pursuant to this paragraph, it shall pay CONTRACTOR for services rendered to the date of termination.

11. TERMINATION WITH CAUSE:

If CONTRACTOR fails to perform any of its obligations under this contract, within the time and in the manner provided, or in the event of any of the following: insolvency of CONTRACTOR; voluntary or involuntary petition in bankruptcy by or against CONTRACTOR; appointment of a receiver or trustee for CONTRACTOR; or an assignment for benefit of creditors of CONTRACTOR, or otherwise violates any of the terms of this Agreement, CITY may terminate the Agreement by giving CONTRACTOR written notice stating the reason for the termination. If CITY terminates pursuant to this paragraph, CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees

III. C. 6

specified in the Agreement as the services satisfactorily rendered by CONTRACTOR bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damage, if any, sustained by CITY due to the breach of the Agreement by CONTRACTOR. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

A. CITY may terminate this agreement effective upon delivery of written notice to CONTRACTOR, or at such later date as may be established by CITY, under any of the following conditions:

- I. if CITY funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This agreement may be modified to accommodate a reduction in funds.
- II. if federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement.
- III. if any license or certificate required by law or regulation to be held by CONTRACTOR, its subcontractors, agents and employees to provide the services required by this agreement is for any reason denied, revoked or not renewed.
- IV. if CONTRACTOR becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against CONTRACTOR, if a receiver or trustee is appointed for CONTRACTOR, or if there is an assignment for the benefit of creditors of CONTRACTOR.

Any such termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. CITY, by written notice of default (including breach of contract) to CONTRACTOR, may terminate the whole or any part of this agreement:

- I. if CONTRACTOR fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- II. if CONTRACTOR fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from CITY, fails to correct such failures within ten (10) days or such other period as CITY may authorize.

The rights and remedies of CITY provided in the above clause related to defaults (including breach of contract) by CONTRACTOR shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

If CITY terminates this agreement under paragraph (B), CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this agreement as the services satisfactorily rendered by CONTRACTOR bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by CITY due to breach of contract by CONTRACTOR. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

12. FORCE MAJEURE:

Neither CITY nor CONTRACTOR shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the agreement.

13. NON-WAIVER:

The failure of CITY to insist upon or enforce strict performance by CONTRACTOR of any of the terms of this contract or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

14. NON-DISCRIMINATION:

CONTRACTOR agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. CONTRACTOR also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to these laws.

15. ERRORS:

CONTRACTOR shall perform such additional work as may be necessary to correct errors in the work required under this agreement without undue delays and without additional cost.

16. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

17. APPLICABLE LAW:

CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to the work under this agreement, including those set forth in ORS 279.310 to 279.320.

18. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

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19. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

20. COMPLETE AGREEMENT:

This agreement and attached exhibits constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. CONTRACTOR, by the signature of its authorized representative, hereby acknowledges that he has read this agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, CITY has caused this agreement to be executed by its duly authorized undersigned officer and CONTRACTOR has executed this agreement on the date hereinabove first written.

CITY (CITY OF MILWAUKIE)

By: _____ Mike Swanson, City Manager

CONTRACTOR

By: _____ Ronald L. Gray

RESOLUTION NO. 2002

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE CERTAIN CONTRACTS FOR FISCAL YEAR 2002 - 2003.

WHEREAS, the City of Milwaukie, by adopting Ordinance No. 1865 and Resolution 35-1994 and 8-2002, has put into place purchasing procedures; and

WHEREAS, contracts for certain services which have projected annual expenditures in excess of \$25,000 require City Council review pursuant to purchasing procedures.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie, Oregon approves:

SECTION 1. The City Council has reviewed the listed services and the projected annual expenditures for such services.

SECTION 2. The City Council finds such services needed and vital to the operations of the City of Milwaukie.

SECTION 3. The City Council authorizes the City Manager to execute purchase orders for the following services.

Vendor	Service Provided	Projected Amount
Alexin Analytical Laboratory	Coliform bacteria, lead, copper, VOC samples	\$46,686.00
American LaFrance	Parts and Services-Fire Trucks	\$30,000.00
ASAP Software	Computer Software	\$30,900.90
City of Happy Valley	A-Level Building Inspections	\$153,000.00
City of Portland	Sewage Treatment Charges	\$163,000.00
City of Portland	Yearly access fee	\$19,285.00
City of Portland	800 MHz Repair & Maintenance	\$50,000.00
City of Portland	PPDS Access Fees	\$16,000.00
Clackamas County Service District #1	Sewer Treatment Charges	\$1,300,000.00
Clackamas County Fire	Fire protection services	\$2,759,869.00
Clackamas River Water	Annual water use per intergovernmental agreement	\$75,800.00
D & A Janitorial	Janitorial Services	\$85,000.00
Don Thomas Petroleum	Unleaded & Diesel Fuel	\$70,000.00
EBS Trust	Medical & Dental Insurance Premiums	\$730,000.00

III. D. 2

Vendor	Service Provided	Projected Amount
Grove, Mueller & Swank, P.C.	Annual Audit Services	\$30,000.00
Les Schwab Tire Center	Tire Purchases for Fire Trucks & City Vehicles	\$50,000.00
Liberty Northwest	Workers Compensation	\$122,343.00
Marsh USA Inc	City Insurance Premiums	\$175,200.00
Marsh USA Inc	Life Insurance Premiums	\$12,000.00
Metropolitan Area Communication Commission	AT &T Franchise Administration	\$45,000.00
NW Natural	Gas for City Facilities	\$33,800.00
Office Depot	Office Supplies	\$12,000.00
Office Depot	Office Supplies	\$12,000.00
Office Depot	Copier Paper JCB,PSB, City Hall	\$4,500.00
Office Depot	Office Supplies for RIM & NST	\$5,000.00
Office Depot	Copier Paper JCB,PSB,City hall	\$4,000.00
Pacific Detroit Diesel	Parts & Services for City Vehicles	\$25,000.00
Portland General Electric	Electricity for City facilities	\$540,500.00
Printing Today	PILOT Printer	\$41,000.00
Qwest	Telephone Service	\$77,700.00
Ramis Crew Corrigan & Assoc.	City Attorney Services	\$180,000.00
State of Oregon	Small energy loan program #L-499	\$35,292.00
State of Oregon	Small energy loan program #L00499B	\$7,176.00
US Postmaster	Replenish postage meter City Hall	\$10,000.00
US Postmaster	Replenish postage meter PSB	\$8,000.00
US Postmaster	Replenish postage meter JCB	\$10,000.00
US Postal Service	Postage for utility billing	\$14,700.00
US Postal Service	Postage for PILOT, other permit #30 mailings	\$25,000.00
Valley Credit Services	Collection Services for Municipal Court	\$25,000.00
Valley Credit Services	Collection Services for Utility Billing	\$6,000.00
Videbeck Productions Inc.	Video Services for Council Meetings	\$7,500.00
Videbeck Productions Inc.	Studio Operation-Public Access	\$75,000.00
Xerox Corporation	Lease, per copy cost, supplies 5387 and DC214	\$12,053.00
Xerox Corporation	Lease, per copy cost, supplies 5387 and DC214	\$7,761.00
Xerox Corporation	Lease, per copy cost, supplies DOC 12	\$9,570.00
Xerox Corporation	Lease, per copy cost, supplies 5387 and 5365	\$13,261.00

III. D. 3

Vendor	Service Provided	Projected Amount
Xerox Corporation	Lease, per copy cost, supplies DC42	\$6,062.00

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on July 2, 2002

Mayor James Bernard

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP

OTHER BUSINESS

VI



To: City Council

Through: Mike Swanson, City Manager *ACP*

From: Alice Rouyer, Director of Community Development & Public Works

Subject: Amend ordinance relating to water, sewer and storm franchise fee

Date: June 21, 2002 for the July 2, 2002 meeting

Action Requested

Approve an amended ordinance imposing a street maintenance franchise fee on the water, sewer and storm drainage funds.

Background

In 1994, the City Council approved an ordinance imposing a street maintenance franchise fee on the water and sewer utility funds. The reason for imposing the fee was to have each of the utilities contribute to city street maintenance needed for construction and maintenance of the City's water and sewer system (such as street openings, roadway patching and trenching). This is a cost-sharing mechanism between the different utility funds.

In the budget approved by the Council for fiscal year 2002/2003, the City will begin imposing a franchise fee on the storm drainage fund in addition to the water and sewer funds. The fee is in the amount of 8% of the net revenue of the water, sewer, or storm drainage charges collected within the city, after deductions have been made for all outstanding debt service obligations. This is a necessary step, given that storm drainage system maintenance also impacts the City's street system. This is a housekeeping matter needed to properly share street maintenance costs between all the city's utilities.

Concurrence

Staff in Community Development, Engineering, Public Works Operations, Finance, and the City Manager's office have reviewed and approved the proposed amendment.

VI. A. 2

Page 2 of 4
Street Franchise Fee Ordinance

Fiscal Impact

The new franchise fee will be collected from the City's storm drainage fund and transferred to the City street fund, as a way to share street system maintenance costs. This action will augment the City's street fund, covering the cost of street system maintenance needs created by the various utilities. No net fiscal impact will result from this action.

Alternatives

1. Adopt the amended ordinance, as proposed.
2. Adopt the ordinance with additional amendments.
3. Do not adopt the proposed ordinance.

Attachments

- Attachment 1: Proposed Street Maintenance Franchise Fee Ordinance
- Attachment 2: Ordinance 1770 Street Maintenance Franchise Fee Ordinance approved in 1994

ATTACHMENT 1

CITY OF MILWAUKIE

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, IMPOSING A FRANCHISE FEE ON THE WATER, SEWER AND STORM DRAINAGE PUBLIC UTILITIES OPERATING WITHIN THE CITY, CLASSIFYING THE FRANCHISE FEE NOT SUBJECT TO THE PROPERTY TAX LIMITATIONS OF ARTICLE XI, SECTION 11(B) OF THE OREGON CONSTITUTION.

WHEREAS, the City of Milwaukie has acquired and does maintain a system of public streets, alleys, sidewalks, bicycle lanes and right-of-way for public use; and

WHEREAS, resources for the maintenance of this street system are limited; and

WHEREAS, on a regular basis, the street system is impacted by the construction and maintenance of the city's water, storm drainage and sewer systems; and

WHEREAS, the cost of restoring the street system after it has been disturbed by water, sewer and storm drainage improvements is a cost properly attributed to the water, sewer and storm drainage utilities; and

WHEREAS, other public utilities within the city have been required to pay a franchise fee to the City for the right to operate within the city's streets;

WHEREAS, the City Council finds that the Water, Sewer and Storm Drainage funds have resources available to pay for the impact of the water, sewer and storm drainage systems on the city's street system; now therefore:

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: Title 3 of the Milwaukie Municipal Code is amended to read as follows:

CHAPTER 3.10

PUBLIC UTILITY FRANCHISE FEE

3.10.10 Franchise Fee imposed.

For the right to operate in, upon and under the street system of the City, a franchise fee is hereby imposed upon and shall be collected annually from the Water, Sewer and Storm Drainage funds of the City. The fee shall be in an amount equal to eight percent (8%) of the net revenue of the water, sewer and storm drainage charges collected within the City after deductions have been made for all outstanding debt service obligations.

VI. A. 4

Page 4 of 4
Street Franchise Fee Ordinance

3.10.20 Payment.

Payment of the franchise fee set forth in Section 3.10.010 shall be made by annually transferring the appropriate sum of money for the franchise fee from the Water, Sewer and Storm Drainage funds to the Street Fund.

Section 3. The City Council determines that the fee imposed by this ordinance is not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

Section 4. Because of the immediate need to begin collecting this fee, as approved in the Fiscal Year 2002/2003 budget, an emergency is declared and this ordinance shall take effect upon its passage.

Read for the first time on _____, 2002 and moved to a second reading by _____ vote of the City Council.

Read for the second time and adopted by the City Council on _____, 2002.

Signed by the Mayor on _____, 2002.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & Bachrach, LLP

Pat DuVal, City Recorder

City Attorney

CITY OF MILWAUKIE

ORDINANCE NO. 1770

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, IMPOSING A FRANCHISE FEE ON THE WATER AND SEWER PUBLIC UTILITIES OPERATING WITHIN THE CITY, CLASSIFYING THE FRANCHISE FEE NOT SUBJECT TO THE PROPERTY TAX LIMITATIONS OF ARTICLE XI, SECTION 11(B) OF THE OREGON CONSTITUTION AND DECLARING AN EMERGENCY.

WHEREAS, the City of Milwaukie has acquired and does maintain a system of public streets, alleys, sidewalks, bicycle lanes and right-of-way for public use; and

WHEREAS, resources for the maintenance of this street system are limited; and

WHEREAS, on a regular basis, the street system is impacted by the construction and maintenance of the city's water system and sewer system; and

WHEREAS, the cost of restoring the street system after it has been disturbed by water and sewer improvements has traditionally been borne by the Street Fund; and

WHEREAS, other public utilities within the city have been required to pay a franchise fee to the City for the right to operate within the city's streets;

WHEREAS, the City Council finds that the Water and Sewer Funds have resources available to pay for the impact of the water and sewer systems on the city's street system; now, therefore:

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Title 3 of the Milwaukie Municipal Code is amended by adding Chapter 3.10 to read as follows:

CHAPTER 3.10

PUBLIC UTILITY FRANCHISE FEE

3.10.010 Franchise fee imposed.

For the right to operate in, upon and under the street system of the city, a franchise fee is hereby imposed upon and shall be collected annually from the Water and Sewer Funds of the city. The fee shall be in an amount equal to eight percent (8%) of the net revenue of the water charges and sewer charges collected within the city after deductions have been made for all outstanding debt service obligations.

VI. A. 6

3.10.020 Payment.

Payment of the franchise fee set forth in Section 3.10.010 shall be made by annually transferring the appropriate sum of money for the franchise fee from the Water Fund and the Sewer Fund to the Street Fund.

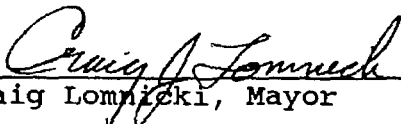
Section 3. The City Council determines that the fee imposed by this ordinance is not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

Section 4. Because of the immediate need to have a stable revenue flow to the Street Fund, an emergency is declared and this ordinance shall take effect upon its passage.

Read for the first time on August 2, 1994 and moved to a second reading by unanimous vote of the City Council.


Read for the second time and adopted by the City Council on August 2, 1994.

Signed by the Mayor on August 2, 1994.




Craig Lomnicki, Mayor

Attest:



City Recorder

Approved as to form:



City Attorney

pjb\mmd\milwaukie\francfee.ord



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel, Program Services Coordinator *JH*
Subject: AT&T Comcast merger
Date: June 19, 2002

Action Requested

Adopt a resolution consenting to the Change of Control of AT&T Corp., the indirect company of TCI cablevision of Georgia, Inc.

Background

AT&T provides cable television service in the City of Milwaukie under a 13- year franchise that the City signed in 1999. Section 3.7 of this franchise states that AT&T will notify the City of any proposed change in control and that City Council must consent to any such change in control.

In December 2001, AT&T and Comcast Corporations announced a proposed merger of AT&T Broadband and Comcast. The merger would form the largest cable/broadband provider in the country, with over 22 million subscribers. On March 4, 2002, the City of Milwaukie received an FCC Form 394 for the TCI of Georgia (TCIG) Franchise. These documents formally requested that the City consent to the proposed change of control from AT&T Corp., to the new AT&T Comcast Corporation. Nearly identical forms were filed with thousands of other local franchise authorities across the country.

The Law & Process

The City Franchise held by AT&T, the 1992 federal Cable Act, and FCC rules govern the "change of control" process. Once a regulatory body receives a complete Form 394, the process allows 120 days to either consent to, consent with conditions, or deny the proposed transaction. (For the City, this deadline is July 2, 2002.) Failure to make a decision within the 120-day time period becomes an automatic "consent"— therefore, it is important for local regulators to act within this time period.

VI. B. 2

After reviewing the five-page Form 394, and attached exhibits, local regulators are allowed to review the **legal, financial, and technical qualifications** of the new entity (AT&T Comcast Corporation) to own and operate the cable system. Unless a franchise specifies additional information that can be requested, the local regulator is limited to these three areas of review.

Staff Review of the Form 394

The Form 394s received by the City included a number of exhibits, as well as a CD-Rom containing over 500 pages of legal and financial documents. Since the City contracts with the Metropolitan Area Communications Commission (MACC) to administer/regulate the AT&T Franchise, MACC performed a formal review of this information with input and guidance from City staff. After reviewing this information and requesting additional information and clarifications, MACC took the following steps on behalf of the City:

Technical Review -- After an initial review of the materials, MACC determined that a formal technical review was not necessary since it is clear the two combined entities clearly have the technical expertise to operate these systems.

Financial Review – In the Form 394, AT&T Comcast certifies that they have sufficient net liquid assets on hand or available from committed resources to complete the transaction and to operate the cable systems. In Exhibit 9 to the Form 394, AT&T Comcast states, "Because Transferee (AT&T Comcast) is a new entity...no financial statements have been prepared...and (there is) no historical financial information." We were provided AT&T Comcast's Pro Forma Financial Statements included in the Preliminary Joint Proxy Statement/ Prospectus filed with the SEC on February 11, 2002. In addition, the Annual Report on Form 10-K for the year ended December 31, 2000 and Form 10-Q for the quarterly period ended September 30, 2001, for each of AT&T Corp. and Comcast Corporation were included with the Exhibits to the Form 394 filing (2001 updates to these reports have also been received).

In discussions with staff at the Mt. Hood Cable Regulatory Commission (Portland, Multnomah County, Gresham, Wood Village, Fairview, and Troutdale) and the Vancouver/Clark County Cable Commission, MACC and the City agreed to share the financial review information developed by Mt. Hood's consultant, Mike Katz, who specializes in this area. (Mr. Katz also serves as MACC's consultant in a number of financial areas.) Since Mt. Hood offered to pay the costs of this financial report, this information was provided at no cost to MACC and the City.

Mr. Katz's report (enclosed as Exhibit A) outlines the nature of the transaction, as well as the financial positives and negatives to the

proposed merger. While there are concerns, as there would be with any merger of this size, he sees no reasons the Change of Control should be denied for financial reasons.

Legal Review – MACC and the City share the same legal counsel for telecommunications matters, Pam Beery of Beery & Elsner. Ms Beery assisted MACC staff in performing the City's legal review of the proposed transaction. This involved a detailed information request to AT&T/Comcast. Ms. Beery also sent AT&T a separate letter regarding several on-going franchise issues. This letter concerned: completion of the City I-Net; the need for all City residents to receive the same level of cable service, the "forced arbitration" clause recently imposed on subscribers; and AT&T's recent decision to stop paying franchise fees on cable modem revenues.

AT&T provided responses to the information requests from both MACC and Ms. Beery. (See summary of both in Exhibits B & C). AT&T's responses to these letters lead to several meetings between MACC and AT&T, as well as meetings between City staff, MACC, and AT&T on the I-Net and subscriber service issues. We will report on these discussions at the July 1st meeting.

If the proposed merger is completed, the franchise holders will remain TCIG both dba "AT&T Comcast." (The new chain of control is outlined in the enclosed organizational charts in Exhibit D.) The local management staff and the regional structure used by AT&T are expected to continue. Headquarters for the new AT&T Comcast Corporation will be located in Philadelphia.

MACC staff also attended briefings hosted by AT&T and Comcast on April 24th and 25th in Portland, and participated in two national conference calls on the merger with other local regulators and AT&T/Comcast representatives.

Franchise Issues – We also identified several other issues in the TCIG Franchise for discussion with AT&T representatives (the specific issues are listed in the first paragraph under "Legal Review" above). Our discussions continue with AT&T regarding these issues as this report is being written. Staff will brief you on the results of these discussions on July 1st. In order to assure franchise compliance after the merger, the pertinent franchise issues are listed in a side letter that AT&T will be asked to sign after the City approves the merger. The side letter is referred to in the resolution Council is considering at their July 2nd meeting.

VI. B. 4/ t -- (AT&T/Comcast Merger)

Concurrence

City and MACC staff, the City Manager and the City's cable legal counsel recommend that Council consent to this transfer of control.

Work Load Impacts

Staff does not anticipate any increase in work load to result from consent to this merger. A denial might increase workload considerably.

Alternatives

Take no action – If the Council takes no action on July 2nd, or within the 120-day period, Federal Law considers the consent automatically given.

Deny consent – If the Council recommends that the request be denied then the control of the City Franchise would not change. However, Federal Law, as discussed above, places limitations on the right to deny. Since a denial would also affect the proposed AT&T/Comcast merger, the City could expect an immediate negative response from AT&T, including legal action to overturn the denial.

Consent to the change of control, or Consent to the change of control with conditions – If the Council consents to AT&T's request, this can be done with or without conditions.

Fiscal Impact

Consent to the change of control will not have any fiscal impact on the City. Denial of consent may result in legal action by AT&T which could have a great fiscal impact on the City's budget.

Memorandum**Attachment A**

To: David Olson, MHCRC
From: Mike Katz, KFA Services
Date: April 25, 2002
Re: AT&T Comcast Merger

This is to summarize our observations regarding financial issues in the proposed merger of AT&T's cable television and related broadband operations ("AT&T Broadband") with Comcast Corporation ("Comcast") into a new entity, AT&T Comcast Corporation ("AT&T Comcast"). These are based on:

- The FCC Form 394 provided by AT&T,
- Responses to questions submitted to them regarding the merger,
- SEC filings of both AT&T and Comcast, and
- Press releases and reports regarding the merger

As you are aware, the proposed merger calls for some preliminary restructuring of AT&T and then merger of both AT&T Broadband and Comcast into AT&T Comcast. The restructuring primarily involves separating AT&T's cable television and related broadband operations, assets, and liabilities from AT&T's more traditional telephone and related service operations. The new cable/broadband entity, AT&T Broadband Corporation¹, will then become a subsidiary of AT&T Comcast², as will Comcast itself.

On completion of the merger, all of the subsidiaries of AT&T Broadband Corporation will remain separate and intact. This implies that whichever AT&T subsidiary is currently the franchisee for a community will remain the franchisee after the merger – only the parent companies at the highest levels will be new entities.

Current owners of AT&T and Comcast stock will simply receive new AT&T Comcast stock in exchange for their AT&T Broadband³ and Comcast³ stock, respectively, and, together, the existing

¹ This entity will be owned by the existing shareholders of AT&T and will be a parent entity to AT&T Broadband LLC, which is a current parent entity to the franchise holders in the MHCRC jurisdictions (TCI Cablevision of Oregon, Inc., AT&T Broadband of Ohio, LLC, and TCI of Southern Washington, Inc.). It will also include other cable assets of AT&T obtained from Media One Group and others in the past couple of years.

² AT&T Broadband Corporation will be owned by AT&T Broadband Holdings, LLC, which will, in turn, be owned by AT&T Comcast.

³ AT&T shareholders are expected to receive approximately .35 shares of AT&T Comcast stock for every share of AT&T they currently own. Comcast shareholders will receive 1 share of AT&T Comcast stock for every share of Comcast they currently own.

AT&T and Comcast stockholders will own the combined AT&T Comcast. The exact type, i.e. voting class, and number of AT&T Comcast shares to be received by each AT&T shareholder will depend upon shareholder votes regarding alternative proposed stock class structures, and upon a formula to be applied at the time of the merger closing⁴.

In any case, however, Brian Roberts, who is the current president of Comcast and who currently controls⁵ 87% of the voting shares of Comcast, will own or control about 33% of the voting control of AT&T Comcast at the time of the merger closing. Mr. Roberts will also be the president and chief executive officer of AT&T Comcast. No other shareholder will own more than 5% of the voting control of AT&T Comcast at that time.

Both AT&T Broadband and Comcast are very large entities in their own right. AT&T Broadband is the largest cable operator in the country with approximately 13.6 million subscribers as of December 31, 2001, penetrating about 55% of the homes passed by its cable systems. At that time, it also served about 1.5 million high-speed cable modem subscribers. AT&T Broadband also owns interests in other cable systems and related ventures, particularly an approximately 25% interest in Time Warner Entertainment⁶.

Comcast is the third largest cable operator in the country with approximately 8.5 million cable subscribers as of December 31, 2001, penetrating about 61% of the homes passed by its cable systems, and with about 950,000 high-speed cable modem subscribers. Comcast also owns QVC, a home shopping network and retailing operation, as well as interests in a number of programming providers and professional sports operations.

From a financial perspective, there are some positives to this transaction:

- Since AT&T Broadband and Comcast are simply combining all of their assets and liabilities while exchanging shares of existing stock for shares of stock in the new combined AT&T Comcast, there are no net new borrowings⁷ required or reductions in cash reserves to pay existing owners.
- One aspect of this proposed transaction is expected⁸ to be the conversion of about \$5 billion in preferred stock/quasi-debt securities of AT&T Broadband, owned by Microsoft, into ordinary common stock, thereby relieving AT&T Comcast of possible future cash dividend obligations.

⁴ This is currently expected to occur around the end of this year, but could be as late as March 1, 2003 under the current merger agreement.

⁵ Brian Roberts' controlling ownership is via Sural LLC, a Roberts family investment holding company he controls.

⁶ AT&T has been exploring a possible sale of its Time Warner Entertainment interest for some time. If and when such a transaction occurs, funds from a sale could be used to significantly reduce AT&T Comcast's debt burden.

⁷ Some existing debt will be refinanced at the time of the merger and AT&T Comcast may choose to borrow some additional amounts to fund near term capital requirements, but the total amount of AT&T Comcast debt outstanding should remain approximately the same as existed in the individual AT&T Broadband and Comcast entities prior to the merger.

⁸ This aspect of the transaction is apparently not required for the merger to proceed. Thus, if for some unexpected reason, the conversion does not take place, the preferred stock obligations will remain. There are a variety of conditions, however, that could allow AT&T Comcast to defer the dividend obligations and, thus, the obligation should still be manageable.

- Comcast is relatively strong financially, compared to other cable operators, and appears stronger than AT&T Broadband currently. Thus, the combined AT&T Comcast should be stronger than AT&T Broadband standing alone, as evidenced by the following indicators:

2001	AT&T Broadband	Comcast	AT&T Comcast ⁹
Revenues	\$ 10.1 Billion	\$ 9.7 Billion ¹⁰	\$ 19.7 Billion
Operating Cash Flow	\$ 2.1 Billion	\$ 2.7 Billion ¹⁰	\$ 4.8 Billion
As % of Revenue	20.6%	27.9% ¹¹	24.2%
Net Income (Loss) ¹²	(\$ 4.2 Billion)	\$.2 Billion	(\$ 3.0 Billion)
Interest Expense	\$ 1.7 Billion	\$.7 Billion	\$ 2.3 Billion
Capital Expenditures	\$ 3.4 Billion	\$ 2.2 Billion	\$ 5.6 Billion
Total Assets	\$ 103.2 Billion	\$ 38.1 Billion	\$ 140.8 Billion
Total Debt	\$ 23.3 Billion	\$ 12.2 Billion	\$ 35.8 Billion
Debt ÷ Cash Flow	11.1	4.5	7.5
Cable Debt ÷ Cable CF	11.1	4.2	7.8 (est.)
Cable Debt per Subscriber	\$ 1,717	\$ 1,021	\$ 1,457 (est.)
Recent Credit Ratings	Baa2 (Moody's)	Baa3 ¹³ (Moody's) BBB (Fitch)	BBB ¹⁴ (Fitch)

The primary financial negative of this transaction, is that the new AT&T Comcast entity will not initially be as strong as the current AT&T Corporation, with its historically substantial telephone and related services revenues available, in theory, to support AT&T's broadband operations:

2001	AT&T Corporation ¹⁵
Revenues	\$ 52.6 Billion
Operating Cash Flow	\$ 15.6 Billion
As % of Revenue	29.7%
Net Income ¹²	\$ 6.8 Billion
Interest Expense	\$ 3.2 Billion
Capital Expenditures	\$ 9.3 Billion
Total Assets	\$ 165.3 Billion
Total Debt	\$ 53.5 Billion
Debt ÷ Cash Flow	3.4
Recent Credit Ratings	A3 (Moody's) A- (Fitch)

⁹ Pro forma consolidation, i.e., as if AT&T Broadband and Comcast had been merged throughout 2001.

¹⁰ About \$5 billion of Comcast's revenue and about \$2 billion of its operating cash flow is related to its cable systems with the rest related to its programming, retail, and sports operations.

¹¹ Operating cash flow from Comcast's cable operations as a percent of cable revenue was about 40.5%.

¹² Excluding cumulative effects of accounting changes.

¹³ Comcast Cable Communications, the subsidiary of Comcast that holds all of its cable and broadband operations, has slightly higher credit ratings from both Moody's and Fitch, Baa2 and BBB+ respectively. Note that all of these credit ratings are at the low end of "investment grade" ratings, but stronger than "junk bond", highly speculative or distressed bond ratings.

¹⁴ Anticipated by Fitch, as of March 2002.

¹⁵ Including AT&T Broadband.

However, AT&T's telephone revenues have been declining and are expected to continue to decline, which, over time, may weaken AT&T Corporation's historical financial strength. Thus, the loss of AT&T support may ultimately be less important than it may have been in the past.

Another financial negative is the relatively high leverage that AT&T Comcast may initially have. Its pro forma 2001 debt-to-cash flow ratio¹⁶ of 7.5 (or estimated 7.8, excluding retail and other operations) is at the high end of industry norms, and the estimated pro forma cable debt per subscriber of about \$ 1,450 is in the middle of the range¹⁷. However, these statistics may improve during 2002, prior to the actual closing of the merger, as each company acts to reduce debt or improve cash flows¹⁸. Moreover, AT&T Comcast can be expected to take actions to improve its operating cash flows after the merger, which, on a percentage of revenue basis, are well below typical cable industry results – normally in the 35% - 45% range. Such steps may include elimination of duplicative corporate functions and costs, rate increases, continued expansion of cable modem and digital service offerings, and/or reductions of other operating costs¹⁹. Success in increasing its cash flow would likely reduce the debt-to-cash flow margin over time and make the debt more manageable.

Note also that both Comcast and AT&T Broadband have completed system upgrades, necessary to provide advanced services, in a majority of their systems; 95% and 74% of Comcast's and AT&T Broadband's systems, respectively, have 550 MHz capacity or greater; 82% and 59%, respectively, have 750 MHz capacity or greater. Thus, capital expenditure requirements in the near future may be lower than in the recent past, potentially reducing the need for additional debt burdens over time.

Finally, we would not expect that the financial structure of this transaction, in and of itself, would directly affect subscriber rates. With respect to regulated rates, the FCC Forms 1240 (basic service tier rates) will be unaffected and, while there may eventually be changes to the methodologies and data used for the Form 1205 (equipment and installation rates), it is impossible to predict whether such changes would have a positive or negative impact.

With respect to unregulated rates, AT&T currently, and AT&T Comcast in the future, can raise or lower those rates as they choose based on their judgments of what the market will bear. We expect that there will be continuing pressure on local cable system management to raise rates as fast as is practicable, regardless of whether or not this merger occurs.

¹⁶ Note that lower debt-to-cash flow ratios (equivalent to higher cash flow-to-debt ratios) generally indicate a stronger financial condition; more cash available to make potential interest and principal payments on the debt.

¹⁷ Based on year 2000 data for large publicly-owned cable operations.

¹⁸ AT&T and Comcast declined to provide pro forma financial projections for 2002 or subsequent periods, but various public documents and statements suggest the companies are expecting improvements in operating margins and reductions in debt-to-cash flow ratios in the next several years.

¹⁹ Of course, while operating cost reductions may help the company financially, some possible reductions may be undesirable from a subscriber viewpoint, e.g., reductions in customer service levels. At this time, however, it is not known what changes in operations, if any, might occur.

Attachment B

Summary of AT&T Responses to the MACC/City Request for Information of April 11, 2002

(Prepared by MACC Staff – Copy of AT&T Letter available at MACC Office)

AT&T Note: Before addressing your specific requests, let me also observe that some of the questions posed appear to address franchise compliance issues, rather than the financial, legal and technical qualifications of AT&T Comcast. Please allow me to clarify that this Transaction is accurately described as a “change of control” not a “transfer.” The change of control described in the Application does not contemplate the sale, transfer, lease, assignment or any other disposition of any individual cable franchise. Under the merger, AT&T Comcast becomes the new ultimate parent company of the Franchisees. The Franchisees will continue to be responsible for the obligations under the franchises.

Furthermore, we note that federal law limits the scope of review and information the Local Authorities may require as part of the change of control approval process.¹ Beyond the information required by the FCC Form 394 Application, franchise or applicable law, a local franchising authority may only request “such additional information as may be reasonably necessary to determine the qualifications of the proposed transferee.”² A federal court has recently confirmed that a cable operator need not answer any requests for information that are outside this scope or are otherwise unreasonable, and such refusal may not be used as a basis for denying consent to the Application.³

Notwithstanding the foregoing, we provide the following information for informational purposes only as many of the questions appear to be beyond the proper scope in this proceeding. By responding, the companies do not waive any arguments regarding the relevance of such information or MACC’s and the Local Authorities’ authority to make such requests.

All questions below were asked by MACC on behalf of the MACC member jurisdictions, Washington County, and the City of Milwaukie. For ease of reference, your questions are repeated below in bold, followed by our response.

¹ See, e.g., Charter Communications, Inc. v. County of Santa Cruz, 133 F.Supp.2d 1184, 1201 (N.D. Cal.2001) (Federal law imposes “certain outer limits on the LFAs’ power to request information over and above that required by Form 394”).

² Implementation of Sections 11 and 13 of the Cable Television and Competition Act of 1992, Report and Order, 8 F.C.C.R. 6828, ¶ 86 (1993). See also id. at ¶ 85; See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Memorandum Opinion and Order on Reconsideration, 10 F.C.C.R. 4654, 4676, ¶¶ 50-53 (1995). In addition, within the first thirty days of receiving the FCC Form 394 Application, an LFA may require the applicant to provide additional information to cure an application inaccuracy or incompleteness. See 47 C.F.R. § 76.501(b).

³ See, e.g., Charter Communications, Inc. v. County of Santa Cruz, 133 F.Supp.2d at 1208 (“an operator may spurn an unreasonable request” for information; “if an LFA imposes unreasonable information demands, it may not then deny the application on the ground that the applicant refused to answer them”).

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1) Please describe any changes to AT&T Broadband operations, services, capital improvement plans, or organization in the Portland metropolitan area that are contemplated to occur as a result of the proposed merger and change of control.

No changes with respect to operations, services, capital improvement plans or organization in the franchise area are required by the Transaction. The Franchisees will continue to be bound by their obligations under the franchises and applicable law in the same manner as before the merger. However, the companies have reserved their rights to make service and operational changes in the future in accordance with their franchise obligations and applicable law.

2) Please describe any changes to AT&T Broadband rates, rate structure, or rate filings (timing or methodologies) that are contemplated to occur as a result of the proposed merger and change of control. Please explain how the merged company will absorb the costs of the merger rather than passing it on to subscribers.

Regulated rates will continue to be set in conformance with FCC regulations that are generally designed to cover inflation, programming costs and other costs related to system operations. The FCC rules do not allow acquisition costs to be factored into these regulated rates. Other rates will continue to be established based on various market and operational factors.

3) AT&T has recently returned senior management staff for the MACC, Washington County, and Milwaukie systems to the Portland metropolitan area. This change has been positive and is appreciated. What changes, if any, are envisioned regarding AT&T local management operations in our area?

It is unknown at this time if there will be any changes to local management. As with all business transactions of this nature, the new company AT&T Comcast will evaluate the management teams and make decisions as appropriate to support the products and service provided to customers.

4) Please provide a detailed organization chart(s) showing the ownership (parent entities), operations, and reporting relationships between the AT&T franchise entities (e.g., TCI of the Tualatin Valley, TCI of Oregon, Inc., TCI NW Division, TCI of Georgia, including TCI West, Inc., etc.). The chart(s) should reflect the three franchises subject to this RFI to and through the AT&T/TCI corporate office, and also to and through the new proposed entity AT&T Comcast Corporation.

Please see the attached organizational chart.

5) Will the guarantors for the three franchises subject to this RFI remain the same after the merger is complete?

The existing guarantors of the Franchisees are expected to remain in place after the merger.

7) Have AT&T or Comcast, or any of their affiliated entities (e.g., Media One, TCI, etc.) been denied a renewal of a franchise agreement in the last five years?

No subsidiary of AT&T or Comcast has had its request for renewal of its franchise subject to a final denial.

8) What changes in subscriber services and offerings does AT&T/Comcast plan, as a result of the merger, in the next two years? In the next five years?

No changes to services or offerings are required by the Transaction. However, although comprehensive plans or time frames have not yet been developed, and no specific plans or time frames exist for the system, economies of scale should enhance AT&T Comcast's ability to upgrade systems and deploy new services.

9) The Merger Agreement and the Separation and Distribution Agreement note the possibility of future reorganization of AT&T Comcast sometime after the merger. When is a future reorganization going to take place? What circumstances could initiate a reorganization, and if one occurred, how would it affect the directors and officers of the individual franchised entities?

While certain internal restructuring may be undertaken in the future, no specific reorganizations are required by the Transaction and, in any event, it is anticipated that no such corporate restructuring would have an impact on local operations.

10) Does AT&T, or AT&T Comcast, or any other affiliated entity, intend to use TCI's cable communications platform to offer non-cable services to area subscribers? If AT&T/Comcast decides to provide other services over the cable plant in the future will it enter or cause the appropriate entity to enter into agreements with MACC jurisdictions and/or the City of Milwaukie regarding the provision these services? Will it or the appropriate entity comply with applicable local, state, and federal laws with respect to those services?

Such information is not within the proper scope of review of an application for approval of the change of control of a Title VI cable operator. Furthermore, the parties' positions on this issue are in no way affected by the merger. All services on the cable system will be offered in compliance with all applicable local, state and federal laws.

11) We understand that AT&T and Comcast offer different "branded" high-speed cable modem services. Does AT&T/Comcast plan to consolidate those services under one "brand" of service? If so, will AT&T and/or Comcast subscribers to these services need to change their ISP configurations? Do you envision any other changes in these services as a result of the merger?

Such information is not within the appropriate scope of review related to the Application as cable modem services were classified by the FCC on March 14, 2002, as an "interstate information service", and are therefore no longer regulated as a cable service. Notwithstanding the foregoing, it is AT&T Comcast's expectation that there will be continuous and stable provision of cable modem service now that the provisioning of such service has been moved in-house. No further conversions from the existing network are required by the Transaction, however, we reserve the right to make changes to the network in the ordinary course of business.

12) Does AT&T Comcast Corporation have the authority to conduct business in Oregon? If not, what are the plans to register the corporation to do business in good standing in Oregon?

AT&T Comcast is a Pennsylvania corporation. Under the proposed merger, the franchises with the MACC jurisdictions will continue to be held by Franchisees, which are duly authorized to do business in the State of Oregon.

13) Please describe the ownership and legal structure of Sural, LLC. What role will Sural play in regarding the management of Comcast? What role will it play in the new AT&T Comcast Corporation?

Sural, LLC is a limited liability company controlled by Brian Roberts, who will be a director, President and Chief Executive Officer of AT&T Comcast following the merger. Upon completion of the merger, Sural, LLC will own 100% of the outstanding Class B common stock. Each share of Class B common stock will be entitled to 15 votes, whereas each share of Class A common stock is entitled to approximately .225 of a vote. As a result, although Sural, LLC will own approximately 1.2% of the outstanding shares of AT&T Comcast capital stock, its votes will represent approximately 33 1/3% of the combined voting power of the AT&T Comcast capital stock upon completion of the merger, which is not a majority control. As President and CEO of AT&T Comcast, Mr. Roberts will have day-today authority over the operations of the business.

14) Will AT&T Comcast Corporation modify the existing AT&T policy regarding consumer complaints and 'forced arbitration'?

No changes to customer complaint or binding arbitration practices and policies are required by the Transaction. The Transaction itself will not affect any customer complaint or mandatory binding arbitration rights. In any event, the Franchisees will continue to be bound by all applicable customer service requirements in the franchise and applicable law following the close of the merger.

15) We have received a letter from the Communications Workers of America (CWA) expressing concerns about the proposed merger. Is AT&T or Comcast entering into discussion with CWA?

Information related to discussions with labor unions is not within the proper scope of review of this proceeding. The information requested by this item does not pertain to the Transaction or the qualifications of AT&T Comcast. Accordingly, the companies are not under any obligation to provide such information as part of this proceeding. Notwithstanding the foregoing, we note that AT&T Comcast's labor relations policies will be governed by relevant labor laws and the terms of applicable agreements with various labor organizations.

17) What process will be used in the event a franchising authority(ies) does not consent to the transfer of control? Is there a threshold percentage or number of franchises that must give consent in order to effect the merger?

There are no contingency plans in the event a franchising authority does not grant consent to the change in control resulting from the Transaction. We believe that all franchising authorities will promptly approve the change of control in light of the nature of the Transaction and the firmly established qualifications of AT&T Comcast. In the event a franchising authority does not consent to the proposed transfer of control, all remedies and actions will be reviewed at such time. There is no threshold percentage with respect to LFA consents specified in the Agreements.

Attachment C

**Summary of AT&T Response to Pam Beery Letter of April 3, 2002
(Prepared by staff – copies of AT&T letter available at City Hall)**

AT&T Note: Please note that the responses are being provided for informational purposes only as many of the questions appear to be beyond the proper scope in this proceeding. By responding, the companies do not waive any arguments regarding the relevance of such information or the City's authority to make such requests.

Questions relating to completeness of form 394 as filed:

Milwaukie Question: Upon reviewing FCC Form 394 materials, I note that AT&T made the unilateral decision not to provide certain exhibits, and schedules (Exhibit 2). Having no opportunity to review this information, I do not know whether or how they would affect our review. Please provide an itemized list of the omitted documents by title and date.

AT&T Response: *As explained in Exhibit 2 to the Application, certain exhibits and schedules to the Agreement and Plan of Merger dated as of December 19, 2001 and the Separation and Distribution Agreement dated as of December 19, 2001 (collectively, the Agreements) were omitted. The instructions to FCC Form 394 state that exhibits or schedules are to be submitted only if "necessary in order to understand the terms" of the transaction that has resulted in a change of control of the cable franchise. These instructions further provide that confidential trade, business, pricing or marketing information, or other information not otherwise publicly available, may be redacted.*

AT&T Broadband and Comcast believe that none of the exhibits or schedules that have been omitted is necessary to understand the terms of the Agreement. Through this response, the parties confirm that the omitted exhibits or schedules do not include information necessary to understand the terms of the Agreement or contain confidential trade, business, pricing or marketing information or other information not otherwise publicly available. As expressly permitted by the FCC Form 394, AT&T Corp. and Comcast are not required to submit such information.

Federal law strictly limits the Franchising Authorities' authority to require information in conjunction with a cable franchise change of control to the information required in the initial Application and such additional information as may be "reasonably necessary to determine the qualifications of the proposed transferee."

Notwithstanding the foregoing, we have attached as Exhibit A a list of the schedules and exhibits to the Agreements that details the subject or title of each schedule and exhibit. This list confirms that, as the Company and Comcast have concluded, such documents are not necessary to understand the Agreements. After reviewing this list, we believe you will agree that such documents are not necessary to your review of the Application

Note: AT&T subsequently provided copies of the documents the City identified as necessary for the review; Pam Beery has reviewed these.

Questions regarding customer service issues:

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Milwaukie Question: AT&T/TCI recently instituted a unilateral mandatory dispute resolution change, requiring its customers to submit to binding arbitration of any disputes with the Company. What impact will the proposed merger have on that attempted unilateral change to customer' rights? Does Comcast similarly require mandatory dispute resolution procedures for its customer? If yes, please provide detail as to how such procedures were implemented, on what date, and the number of customer disputes submitted to such procedures from the date of inception forward, nationwide.

AT&T Response: *Since Franchisee is not changing, we believe the information requested is not within the City's proper scope of review related to the Application. Notwithstanding the foregoing, no changes to customer complaint or binding arbitration practices and policies are required by the transaction. The transaction itself will not affect any customer complaint or mandatory binding arbitration rights. In any event, the Franchisee will continue to be bound by all applicable customer service requirements in the franchise and applicable law following the close of the merger.*

Milwaukie Question: Section 4.2. A of the Franchise states: "It is the Grantor's general policy that all residences in the Grantee's Franchise Area should have equivalent Service Availability from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions." Under this provision, the City believes all residences within the corporate limits of the City should be receiving broadcast of the Milwaukie Access channel. To date, AT&T staff have agreed to modify signal/headend feeds to individual properties, but have made no assessment of all City subscribers. The City needs either (1) AT&T to certify that the Milwaukie Access channel is being provided to every residence within the City, in compliance with the franchise, or (2) a concrete written plan for compliance with the franchise requirement before consent to the transfer of control.

AT&T Response: *Since Franchisee is not changing, we believe that the information requested is not within the City's appropriate scope of review related to the Application. The assurances requested do not pertain to the merger or the qualifications of the proposed new controlling entity, AT&T Comcast. Additionally, because this is a change of control, any compliance issues are not extinguished and the City will have all rights to continue investigation of any compliance matters following the close of the merger under the terms set forth in the franchise agreement. Thus, the merger will have no impact on the Franchisee's ability to honor its commitments and obligations under the franchise. Notwithstanding the foregoing, we hope to continue discussions on this matter outside of this proceeding to reach a mutually acceptable resolution.*

Questions regarding financial assurances, and compensation for right of way use:

Milwaukie Question: The franchise agreement provides for financial guarantees to protect the City of Milwaukie and the public's interest in rights of way occupied by the AT&T/TCI cable system. Is the proposed transferor prepared to guarantee in writing that such financial assurances will continue in force uninterrupted?

AT&T Response: *Although AT&T Comcast will be the new ultimate parent corporation of Franchisee, the franchise will not be transferred as a result of the merger. Franchisee as a distinct legal entity has the necessary legal, financial and technical qualifications to ensure compliance with the terms of the franchise agreement. Thus, it is not necessary for AT&T Comcast to guarantee the obligations of Franchisee.*

Milwaukie Question: TCI West guarantees performance of all franchise requirements. Is the proposed transferor prepared to guarantee performance in writing? If not, what guarantee is offered?

AT&T Response: *TCI West, Inc. the existing guarantor of Franchisee is expected to remain in place after the merger. Thus, it is not necessary for AT&T Comcast to provide a guaranty of the obligations of the Franchisee.*

Milwaukie Question: Milwaukie and AT&T/TCI have been in dispute over the obligation of AT&T/TCI and its affiliates to obtain appropriate authority and provide appropriate compensation for right of way use as the result of its provision of high speed cable modem and telecommunications services. Please indicate how the proposed transferee intends to resolve this dispute consistent with the franchise and other applicable laws.

AT&T Response: *Such information is not within the proper scope of review by the City of an application for approval of the change of control of a Title VI cable operator. Furthermore, the parties' positions on this issue are in no way affected by the merger. All services on the cable system will be offered in compliance with all applicable local, state and federal laws.*

Milwaukie Question: AT&T/TCI has indicated its intention to pass through to residential subscribers the cost of franchise fee obligations resulting from its provision of other services, including home shopping and advertising. Specifically, using a nationally derived formula, AT&T/TCI has indicated it will increase residential subscriber rates by a flat amount which does not reflect local data. The Federal Communications Commission's decision allowing generally for such pass-throughs to subscribers is on appeal. Describe how the proposed transfer will adjust its policies to reflect either local data and/or a court ruling on this issue. Does Comcast similarly pass these costs through to its residential subscribers? If so, please provide detail as to how this is accomplished. Does AT&T/TCI or AT&T Comcast intend to seek recovery of any such costs from subscribers or otherwise on a retroactive basis?

AT&T Response: In accordance with the FCC's Memorandum Opinion and Order adopted October 1, 2001 ("Pasadena Decision"), Franchisee will continue its lawful right to collect from customers and itemize on monthly billing statements all franchise fees paid to the City, including those paid on non-subscriber revenues following the close of the merger. Comcast currently collects franchise fees paid to local franchising authorities on non-subscriber revenue from subscribers.

Notwithstanding the foregoing, pursuant to law, AT&T Broadband and Comcast are currently prohibited from discussing operational changes at this time. However, the companies have reserved their rights to make service and operational changes in the future in accordance with their franchise obligations and applicable law. Nonetheless, no changes with respect to operations, services, capital improvement plans or organization in the franchise area are required by the transaction. The Franchisee will continue to be bound by its obligations under the franchise and applicable law in the same manner as before the merger.

Questions regarding compliance with franchise terms: I-Net and franchise fees:

Milwaukie Question: Section 9 of the Franchise requires AT&T to provide new I-Net facilities to other sites listed in Exhibit E. It is clear from inclusion of this list in the franchise, and the requirements of Section 9, that both City staff and AT&T staff understood the City's request for construction of these connections made during the franchise negotiations. It further does not

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appear that AT&T complied with the franchise requirements regarding notice to the City during the upgrade construction, which was going on in part during the renewal negotiations. Exhibit E lists 13 "existing" sites and 3 "additional" sites to be upgraded and constructed to fiber. The City will need you to satisfactorily address I-Net connectivity to the Exhibit E sites, in compliance with the Franchise, before consenting to the transfer of control.

AT&T Response: Since Franchisee is not changing, we believe that the information requested is not within the City's appropriate scope of review related to the Application. The assurances requested do not pertain to the merger or the qualifications of the proposed new controlling entity, AT&T Comcast. Additionally, because this is a change of control, any compliance issues are not extinguished and the City will have all rights to continue investigation of any compliance matters following the close of the merger under the terms set forth in the franchise agreement. Thus, the merger will have no impact on the Franchisee's ability to honor its commitments and obligations under the franchise.

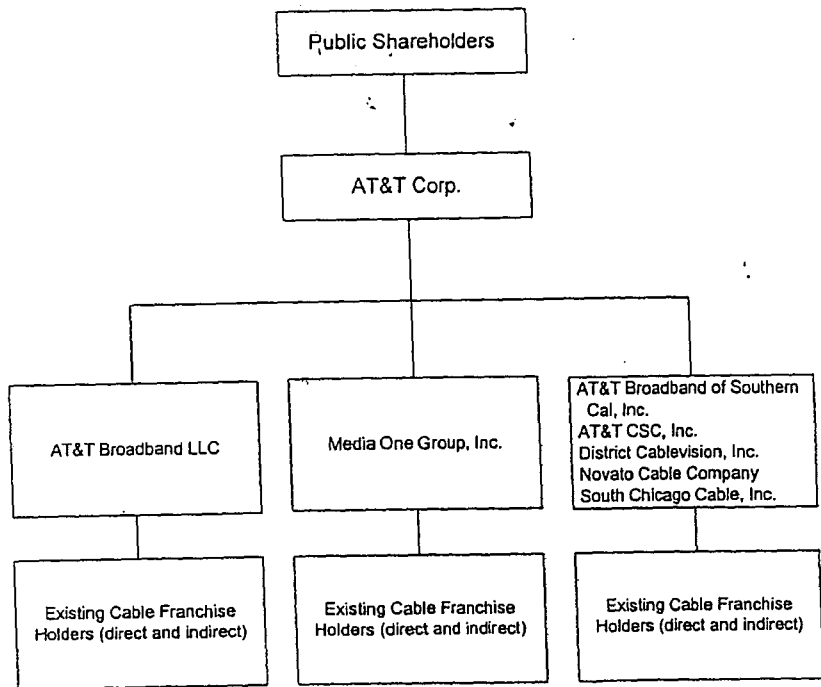
Milwaukie Question: AT&T has notified local franchise authorities of its unilateral decision to withhold payment of franchise fees on cable modem services, and to cease collecting those fees from subscribers.

a. Does such decision apply in Milwaukie? If so, please provide a copy of any written notification given to the City.

b. How is this decision consistent with the franchise agreement?

AT&T Response: In a recent letter, AT&T Broadband informed the City that, in the Declaratory Judgment and Notice of Proposed Rulemaking Order issued by the Federal Communications Commission on March 14, 2002 (the "FCC's Decision"), the FCC ruled that cable modem service is an interstate information service and, as a result, that revenue from cable modem service should not be included in the calculation of gross revenues from which franchise fees are paid. Thus, in its recent letter, AT&T Broadband informed the City that it would no longer bill customers for franchise fees on cable modem service, that AT&T Broadband will be issuing credits to customers for franchise fees paid on cable modem service for the service period after March 15, 2002, and that AT&T Broadband will remit to the City all franchise fees billed and collected for cable modem service up to March 15, 2002.

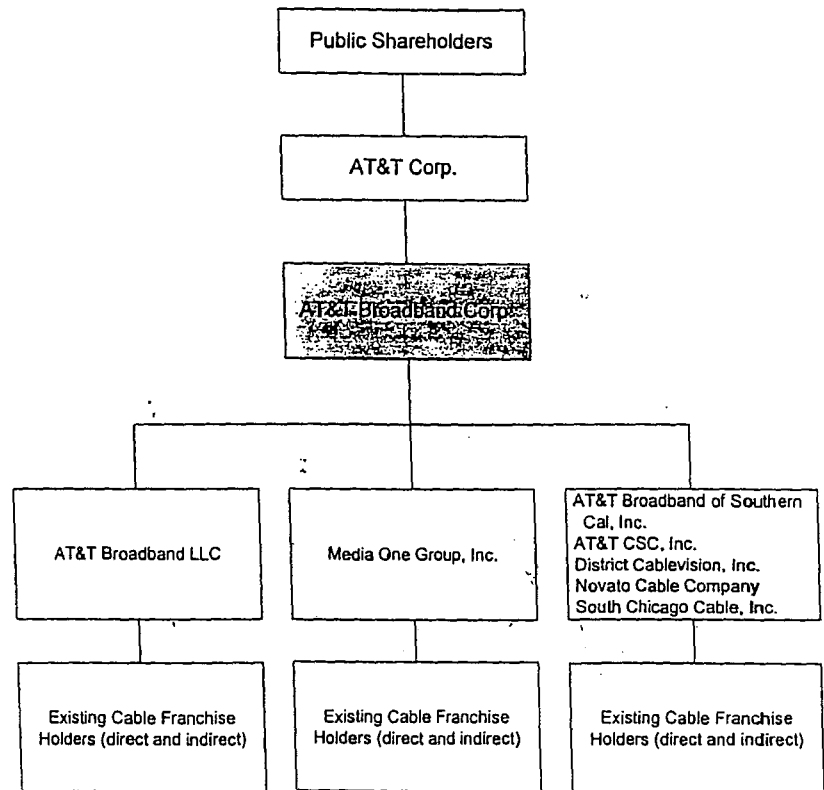
CURRENT STRUCTURE



Attachment D

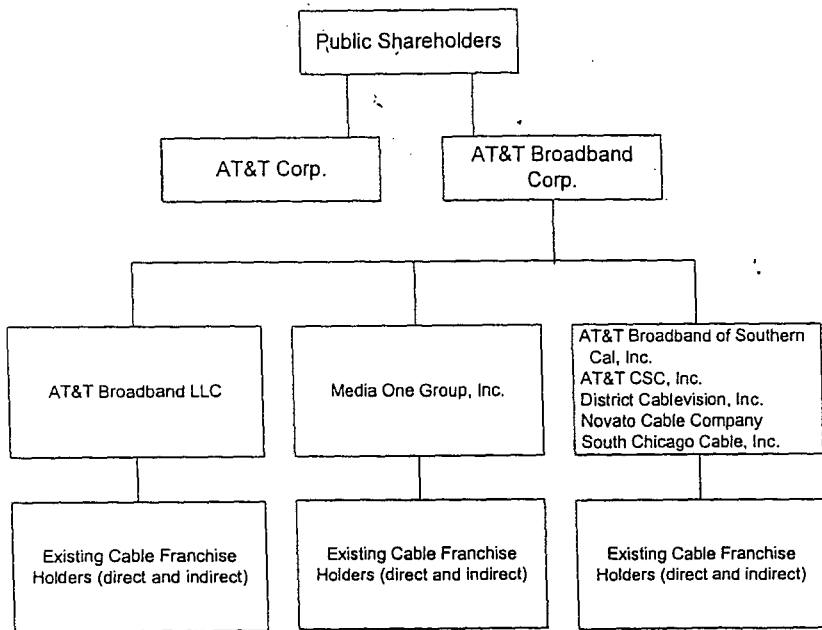
STEP #1

Restructure some internal subsidiary legal entities without affecting ultimate control of Franchisee. Contribute entities that own or control cable franchisees to a newly formed wholly owned subsidiary of AT&T Corp.



STEP #2

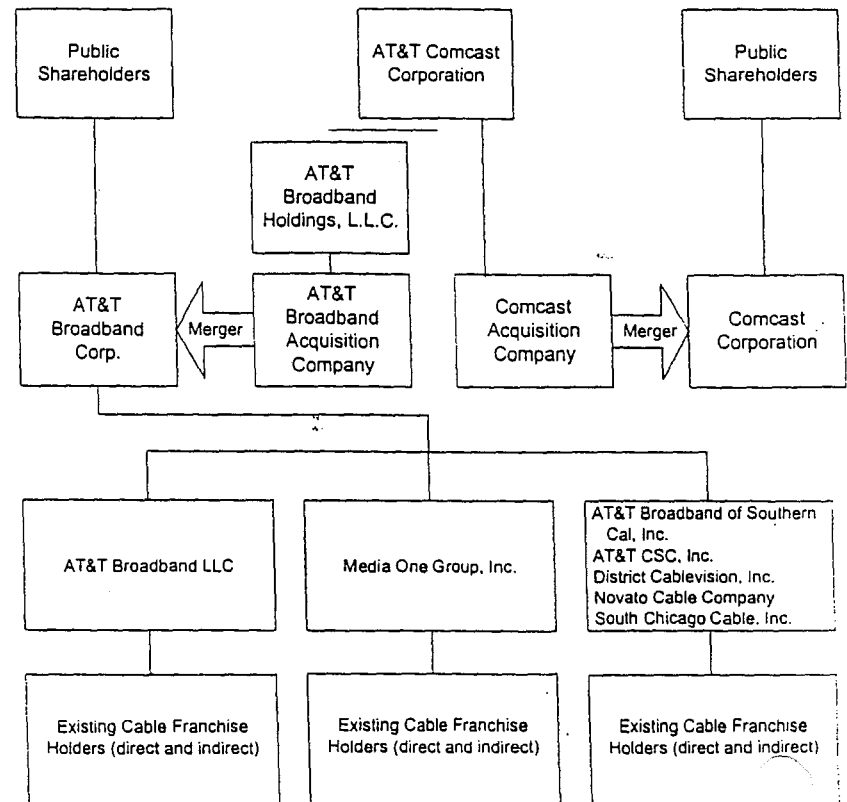
Spin-off AT&T Broadband Corp. to AT&T Shareholders



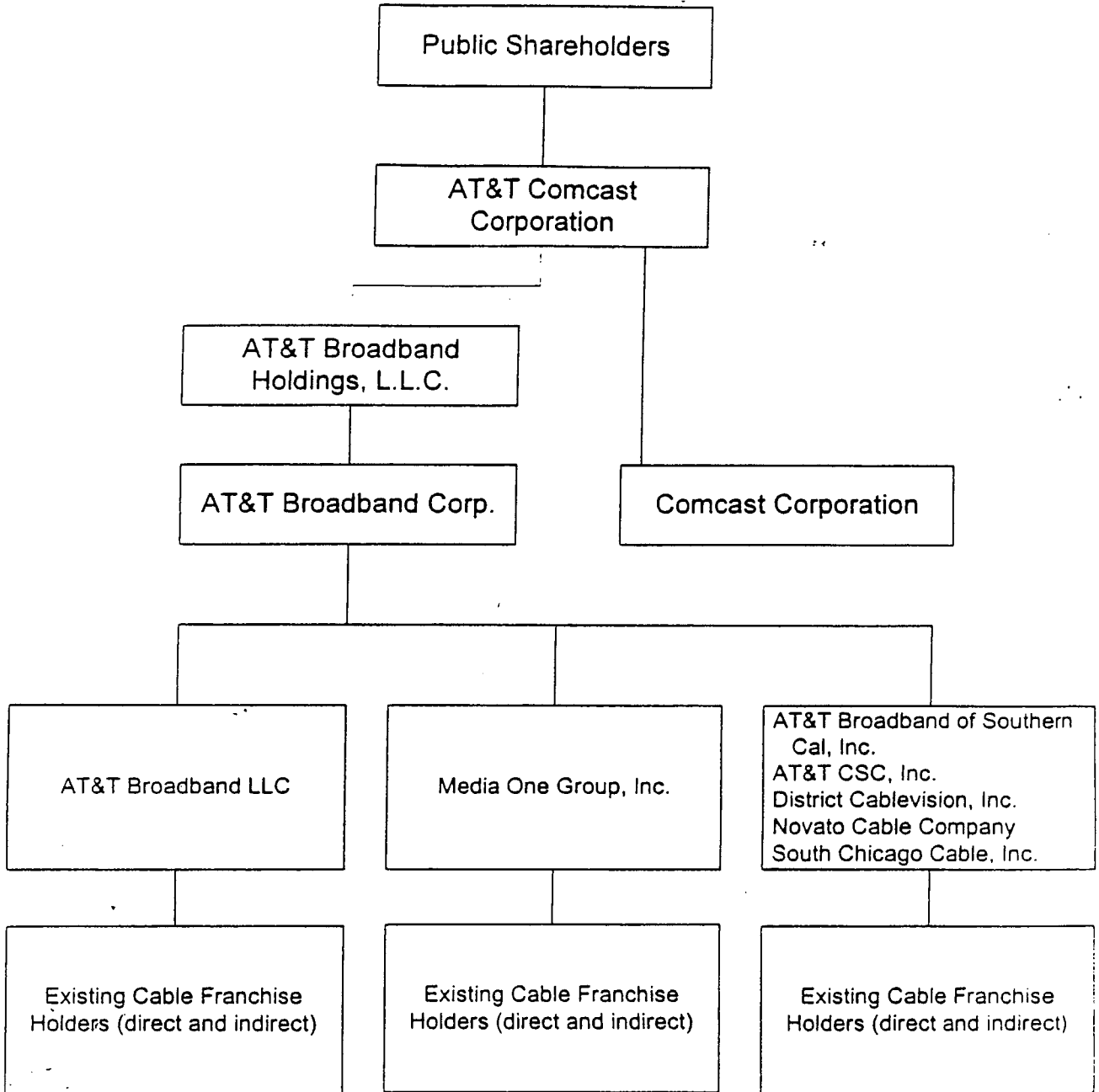
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STEP #3

Merge wholly owned Subsidiaries of AT&T Comcast Corporation into AT&T Broadband Corp. and Comcast Corporation



FINAL STRUCTURE



A RESOLUTION CONSENTING, WITH CONDITIONS, TO THE CHANGE OF CONTROL OF AT&T CORP., THE INDIRECT PARENT COMPANY OF TCI CABLEVISION OF GEORGIA, INC.

WHEREAS, TCI Cablevision of Georgia, Inc., whose indirect parent company is AT&T Corp. (hereinafter "AT&T"), is the Grantee under a Cable Television Services Agreement approved by the City of Milwaukie in June, 1999 (hereinafter "Franchise"); and

WHEREAS, the Metropolitan Area Communications Commission, hereinafter "MACC", is an intergovernmental commission formed under ORS Chapter 190, with Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, and Tualatin as members; and

WHEREAS, the City of Milwaukie contracts with MACC for administration of the Franchise; and

WHEREAS, AT&T and Comcast have agreed to merge their companies to create the new ATT Comcast corporation. AT&T has requested the consent of affected jurisdictions to a change of control, by filing a Federal Communications Form 394 with each such jurisdiction, pursuant to Section 3.7 of the Franchise; and

WHEREAS, federal law establishes a procedure and criteria for local franchise authorities to review requests for changes of control to assess the legal, technical, and financial ability of the new controlling entity to assure their obligations will continue to be performed under the terms and conditions of the Franchise; and

WHEREAS, MACC staff and consultants have reviewed the Form 394 from AT&T Corp. and have requested and reviewed certain additional information from both AT&T and Comcast, including assurances made by each entity, in order to assess the legal, technical, and financial qualifications of the Grantee to continue to perform as required by the Franchise; and

WHEREAS, MACC held a public hearing on the 9th day of May, 2002 wherein it received public testimony and written and electronic communications; and

WHEREAS, Milwaukie has received a letter of assurance from AT&T, wherein AT&T agrees to abide by the terms and conditions of the Franchise and recognizes significant local issues of concern, which letter of assurance is attached hereto as Exhibit A; and

WHEREAS, the Milwaukie City Council deems it to be in furtherance of the public interest and the welfare of its citizens to consent to the transfer request;

Now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF MILWAUKIE, OREGON, that:

Section 1. The findings of MACC demonstrate that the applicant's legal, technical, and financial qualifications to perform under the Franchise are adequately assured.

Section 2. The City Council hereby consents to the change of control of AT&T Corp. as set forth in the Federal Communications Form 394, pursuant to Section 3.7 of the Franchise.

Section 3. The consent granted herein shall not become effective until the following conditions are met:

- a. The City's consent to the change of control shall not be construed to constitute a waiver or release of any rights the City may have under the Franchise or any separate written agreements with the Grantee; and
- b. Grantee shall continue to comply with all local laws, agreements, and Franchise requirements consistent with applicable federal and state law; and
- c. Grantee and the Guarantor of the Franchise acknowledge the conditions of transfer approval in writing; and
- d. Completion of the merger as identified in the form 394 by midnight, May 10, 2003.

Section 4. The Mayor is authorized to execute and file a copy of this Resolution with MACC.

Section 5. This Resolution shall take effect immediately upon signing by the Mayor.

Introduced and adopted this ____ day of _____, 2002.

Effective date July 2, 2002.

Mayor James Bernard

ATTEST:

APPROVED AS TO FORM

City Recorder

Ramis, Crew, Corrigan & Bachrach

VI. B. 22

EXHIBIT A
Resolution No. _____
AT&T and Comcast Merger

July, 2002

Ms. JoAnn Herrigel
Program Services Manager
City of Milwaukie City Hall
10722 SE Main Street
Milwaukie, OR 97222

RE: FCC Form 394 Filed March 4, 2002 – City of Milwaukie
AT&T Corp. Merger Transaction

Dear Ms. Herrigel:

We understand that the City of Milwaukie ("Franchising Authority") has several concerns relating to certain compliance matters under the franchise held by TCI Cablevision of Georgia, Inc., a.k.a. AT&T Broadband ("Franchisee"). The Franchising Authority has notified Franchisee of its concern that it would not be appropriate to approve a change of control prior to resolution of alleged franchise violations with respect to the following issues. The issues are more specifically set forth below:

- (1) Franchisee's notification that it will not collect or pay franchise fees based on revenues derived from its cable modem Internet service as of April 1, 2002;
- (2) Franchisee's dispute resolution policies and procedures relating to disputes between the subscriber and Franchisee;
- (3) Use of the Franchising Authority's public rights-of-ways, and use of Franchisee's facilities by others within the Franchise Authority's public rights-of-way;
- (4) Franchisee's decision to recover the cost of franchise fees on certain non-residential subscriber revenues from residential subscribers (the so-called "Pasadena pass-through"); and
- (5) Construction of the City Institutional Network, as required by Section 9 of the Franchise; and
- (6) Service to all residents within the City of Milwaukie, as the city boundaries may change over the life of the Franchise, as required by Section 4.2 of the Franchise.

In order to successfully complete the consent process currently taking place by the Franchising Authority on the change of control of AT&T Broadband and Comcast Corporation ("Merger") by July 2, 2002, as agreed to by the

Franchise Authority and the companies, the Franchise Authority and the companies agree to discuss the Identified Issues towards reaching mutually satisfactory resolutions, separate and independent from the consent process. The parties agree to meet within 120 days from July 2, 2002, and make good faith efforts to resolve the Identified Issues within six (6) months.

It is understood that the consent to the change of control of this Franchise shall not extinguish the Franchising Authority's right and ability to pursue any remedy against Franchisee available under the Franchise with respect to any compliance issues not mutually resolved. This letter may be referenced in any action taken by the Franchising Authority concerning the proposed change of control or Franchise compliance.

It is also understood and agreed that the Franchising Authority and the Franchisee shall not be deemed or construed to have waived any claims, actions, or defenses with respect to Identified Issues, or other possible or alleged franchise violations that remain unresolved.

By signing below the parties acknowledge and agree to the matters described herein above.

By: City of Milwaukie

By: TCI Cablevision of Georgia, Inc.

City Manager

Senior Vice-President