

LRB-RESEARCH AND ANALYSIS SECTION

JUDICIARY & LEGISLATION COMMITTEE

ITEM 3, FILE # 061145

JANUARY 8, 2007

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File 061145 is a resolution authorizing payment of up to \$100,000 from the Damages and Claims Fund Special Purpose Account to pay claims from the law firm of Miller & Van Eaton for legal fees.

Background

1. The City has taken the position that the Internet protocol video service recently developed by AT&T, offering 200 or more channels, is subject to the "city of Milwaukee cable system ordinance" at ch. 99 of the code. Wisconsin Bell, Inc., dba "AT&T Wisconsin" and sometimes dba "Ameritech" is wholly owned by AT&T Teleholdings, Inc. and takes the position that its new video service is not a "cable system" under the Cable Communications Policy Act of 1984, 47 U.S.C. s. 541. Federal law permits municipal jurisdictions to negotiate service franchise agreements with cable television providers that require community-wide access to the service.
2. The City has previously negotiated a cable TV franchise agreement with Time Warner that is expected to provide approximately \$3.8 million in revenue to the City in 2007.
3. AT&T has recently obtained a zoning variance and numerous permits for placement of equipment cabinets and cable. AT&T initially stated to City engineers that such installations were necessary for the provision of "telecommunications." The City has since determined, and AT&T representatives have confirmed, that many of these installations are intended to support video service in addition to telecommunications.
4. The dispute about the applicability of the cable ordinance to "U-Verse" has resulted in complex negotiations and in federal litigation filed by the City against AT&T on Wednesday, December 20, 2006 (*City of Milwaukee v. Wisconsin Bell, Inc.*, E.D. Wis., Civil Case No. 06-C-1299). The City Attorney has retained the law firm of Miller & Van Eaton of Washington, DC, to assist in this litigation. The Miller & Van Eaton firm has extensive experience in federal, state and local matters involving cable television franchising agreements and litigation. In addition representing the City in the litigation, Miller & Von Eaton are participating in the negotiations, already in progress, to obtain an interim agreement with AT&T that will likely include provisions for revenue in the event that AT&T initiates video service.

Discussion

1. The 2006 Damages and Claims Fund Special Purpose Account currently has a balance of nearly \$1.77 million according to John Egan, Accounts Director, Office

of the Comptroller. It is anticipated that a request will be made to carry over any balance remaining in the Account and to add the amount to the \$3,875,000 budgeted for 2007.

2. Payment of the claims of outside counsel from the Damages and Claims Fund is not unusual due to limitation of the funds available in the Outside Counsel/Expert Witness Special Purpose Account.
3. The Damages and Claims Fund is generally utilized to pay for damages and liabilities incurred by the City. Approximately \$35,000 to \$55,000 is paid out monthly in routine claim and lawsuit payments. Another \$75,000 is paid annually for uninsured motorist claims.
4. The amount budgeted for 2007 in the Damages and Claims Fund Special Purpose Account is \$2 million greater than the amount provided in previous years due to the exposure of the federal court judgment in *Alexander, et al v. City of Milwaukee, et al*. The case is now on appeal before the 7th Circuit U.S. Court of Appeals. The total of damages award by the District Court, together with awards of attorney fees and costs, is \$4,167,684. If this award is upheld, there will likely be an additional award of fees to the plaintiffs' attorneys for the appeal, plus interest on the initial awards.
5. Estimating future claims and liabilities is difficult at best. It was the position of the City Attorney, the Budget Director and the Comptroller, at the October 4, 2006, budget hearing before the Finance Committee, that the amount budgeted, taken together with anticipated carryover, is a responsible figure in light of known risk exposure. Federal litigation in the Frank Jude Jr. matter was filed on October 23, 2006, and may result in additional claims on the Damages and Claims Fund and on the Outside Counsel/Expert Witness Special Purpose Account.

Fiscal Impact

1. The \$100,000 to be reserved by this resolution will likely be expended given the complexity of negotiations and litigation.
2. Successful negotiation of an interim agreement and successful resolution of the litigation will result in significant and continuing franchise revenues to the City.

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