



411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497
Tel 414.277.5000
Fax 414.271.3752
www.quarles.com

Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

Writer's Direct Dial: 414.277.5423
Writer's Fax: 414.978.8752
E-Mail: cln@quarles.com

March 21, 2007

VIA FACSIMILE AND U.S. MAIL

Grant Langley, City Attorney
Vincent Moschella, Deputy City Attorney
City of Milwaukee
200 E. Wells Street
Room 800
Milwaukee, WI 53202

RE: City of Milwaukee/AT&T Agreement

Dear Attorneys Langley and Moschella:

We represent Time Warner Cable. As you know, the City of Milwaukee and Time Warner Cable entered into a Cable Television Franchise Agreement (the "Agreement") in which the City granted Time Warner a franchise to provide cable services pursuant to Chapter 99 of the Milwaukee Code of Ordinances (the "Cable Ordinance").

We are in receipt of your letter dated March 16, 2007 summarizing and transmitting the Agreement between AT&T and the City of Milwaukee. Though styled as an "Interim Operating Agreement", if this Agreement is entered into between the City of Milwaukee and AT&T, it clearly is a "Franchise Agreement" within the spirit and letter of the law as codified in the City's Cable Ordinance and as referred to in the Franchise Agreement between the City of Milwaukee and Time Warner.

As we previously have said, Time Warner agrees with the conclusions reached by City Clerk Leonhardt and previously conveyed to AT&T that its "U-verse Cable Service" is subject to regulation as a "cable system" under the Cable Ordinance and that the U-verse Cable Service is in fact a "cable service" subject to federal, state, and local regulation. While we reserve the right to comment further on the Agreement, in light of its terms and in light of your dispute with AT&T about whether the Cable Ordinance applies, please advise us of the City's express authority to enter into this Agreement. If this Agreement is not valid or enforceable, then very severe consequences could result for the City and for those persons who might be served by this "experimental" service.

Grant Langley
Vincent Moschella
March 21, 2007
Page 2

We also have expressed our concern regarding the roll out of AT&T's U-verse Cable Service in the City of Milwaukee. As you know, AT&T has in fact "gone live" with its U-verse Cable Service without first getting a franchise from the City. It is our understanding that AT&T currently has paying customers in the City, and is selling its video services without a franchise. We have made clear that this action is an extremely serious breach of the spirit of the negotiations between the City and AT&T, and it violates the City's cable franchise agreement with Time Warner Cable.

While we understand that the franchise granted to Time Warner is non-exclusive, Time Warner entered into the Agreement based on the terms contained in the Agreement and the Cable Ordinance. These terms provide Time Warner with the assurance that like products will be treated alike, and that all players in this business segment will operate on a level playing field with parity among them. Under the City's Agreement with Time Warner Cable, the City is obligated to renegotiate its Agreement with Time Warner Cable if the City enters into any agreement with another video service provider on more favorable terms, and if Time Warner prefers those terms and agrees to be bound by any other provisions in the new agreement.

We still are in the process of closely reviewing the AT&T Agreement, but it already is clear to us that there are several significant areas of substantive difference between the AT&T Agreement and the Time Warner Cable Agreement. Time Warner Cable expects and is entitled to parity in its requirements and obligations with the City of Milwaukee relative to any provider, including AT&T.

Based on our preliminary review of the AT&T Agreement to date, some of the significant areas lacking parity include the following:

1. **Service Area.** AT&T is only required to make service available in 25% of the "Regional Service Area" within three years. Of this 25%, only 25% of those served need be low income residents. The "Regional Service Area" is defined to include not only the City of Milwaukee but also other jurisdictions in Southeastern Wisconsin. Thus, there is no specific obligation to serve all or even any part of the City.

This service requirement is significantly less than what has been required of Time Warner Cable. As a starting point, Time Warner Cable currently makes its service available to 100% of the City. This obviously also includes all low income areas. It also bears noting that during its comparable "start up" period, Time Warner Cable only was given twenty-eight (28) months to make service available throughout the entire City of Milwaukee, including so called "hard to construct" areas. In short, Time Warner Cable was required to make service available throughout the entire City within twenty-eight (28) months, whereas AT&T is given thirty-six (36) months to make service available to only 25% of the homes in the "Regional Service Area".

Grant Langley
Vincent Moschella
March 21, 2007
Page 3

Aside from the importance of making service available to all residents in the City of Milwaukee and not simply "cherry picking" the most affluent neighborhoods, Time Warner Cable incurred considerable cost in making service available to 100% of the City. The cost incurred by Time Warner Cable is significantly greater than the cost that AT&T will incur in making its service available in the "Regional Service Area". On both a public policy and a cost basis, the Service Area requirement is not an area of parity between the AT&T Agreement and the Time Warner Cable Agreement, not to mention that AT&T is being allowed to cherry pick and under-serve important segments of the Milwaukee community.

2. **PEG Channels.** There is a huge gap in the PEG channel requirements between the Time Warner Cable Agreement and the AT&T Agreement. As you know, Time Warner Cable currently provides four PEG channels, and the City has the ability to get an additional channel if it meets certain requirements. Additionally, Time Warner Cable is required to provide an additional "return line" per year. Time Warner Cable so far has provided seven return lines at a very significant cost to Time Warner Cable.

In contrast to Time Warner Cable's PEG requirements, AT&T only has a "best efforts" PEG requirement. Moreover, AT&T is not required to commit to any particular number of PEG channels. Nor does AT&T have any obligation to provide return lines as Time Warner Cable does. In fact, AT&T apparently can offset the cost of equipment or cost of transport to provide the PEG channels against the 2% PEG fee that is more fully described below. These clearly are significant differences on the PEG requirements.

3. **PEG Funding.** Time Warner Cable was required to provide a \$5.2 million "PEG Grant" to the City of Milwaukee. Time Warner Cable also agreed to limit the maximum pass through to \$511,000.00 per year. Again, in stark contrast to this requirement, AT&T's Agreement requires a 2% PEG payment, and even then, AT&T only is required to make a PEG payment when it reaches 1,000 customers or within 18 months after the Agreement is executed, whichever occurs first. Unlike the treatment afforded AT&T, Time Warner Cable has been subject to PEG Funding requirements from the very original date of the franchise without the benefit of any "start-up" period such as the 18 months AT&T is given. Likewise, Time Warner Cable's PEG funding obligations have always been "fixed" regardless of the number of customers that the company may have. All of this stands in stark contrast to the "illusory" requirements imposed upon AT&T.

And though it may appear that AT&T is being subjected to a higher PEG fee requirement, as a practical matter, this is not a significant cost because no fee will be required for possibly 18 months — if ever. And if AT&T ever were subjected to the PEG fee, the amount of money paid to the City would be *de minimis* based on your and AT&T's own projections of likely customers in the next 18 months. This again is an area where parity between the Agreements is sorely lacking.

Grant Langley
Vincent Moschella
March 21, 2007
Page 5

Again, in contrast, AT&T has no scholarship requirement at all. So this too is an area where significant differences exist between the two Agreements, and these differences work to the disadvantage of Time Warner.

7. **DBE Loan Program.** Time Warner Cable is required to provide \$200,000 in disadvantaged business enterprise ("DBE") loans. Again, AT&T has no similar such requirement. This too is an area where significant differences exist between the two Agreements, and these differences work to the disadvantage of Time Warner.

8. **DBE Participation.** Time Warner Cable has a best efforts goal of 18% disadvantaged business enterprise (DBE) participation. By contrast, AT&T only is required to continue to participate in its "self-created" existing supplier diversity program. Importantly, there apparently is no specific numeric goal for AT&T. This too is an area where significant differences exist between the two Agreements, and these differences work to the disadvantage of Time Warner. Does the City even know what has been the performance of AT&T under its program? We respectfully request this data if the City has it.

9. **Term.** We note in general that the term of the AT&T Agreement is significantly less than Time Warner Cable's (3 years versus 17 years). To the extent that more onerous substantive terms are imposed upon Time Warner Cable than AT&T during the term of the respective agreements (as summarized above), then the much longer duration of the Time Warner Cable Agreement obviously multiplies the extent of these onerous requirements on Time Warner Cable.

Beyond these particular areas, there certainly are other significant substantive gaps and a lack of parity in the proposed AT&T Agreement as compared to Time Warner Cable's Agreement. However, we have tried to focus here on the areas of most immediate concern. Even more surprising in this connection is that for the first time, City Council is being divested of its authority to determine compliance with the agreement as that authority is given de novo to two unelected persons not even confirmed by the council. The issues of city-wide service and equitable access are of such importance that those should be decided by elected officials who can balance the competing considerations of various constituencies in the City, not unelected persons. The need to have technology available to the entire populous, no matter what their economic means, is critical to enable economic vitality of the City and to allow all citizens to compete in this information age. We and Time Warner Cable are continuing to review the AT&T Agreement. We may well identify other significant disparities that we will bring to the City's attention.

Finally, it is our understanding that the Steering and Rules Committee will hold a Hearing this Thursday, March 22nd at 1:30 p.m. on AT&T's Agreement. As you know, under

Grant Langley
Vincent Moschella
March 21, 2007
Page 6

Time Warner Cable's Agreement with the City, Time Warner Cable has 90 days after the City enters into the AT&T Agreement to determine whether to exercise its rights under the most favored nation ("MFN") provision. Time Warner Cable will continue to evaluate its options during this time and assess how best to proceed. If the Common Council acts on your recommendation and adopts the proposed AT&T Agreement, Time Warner Cable will respond within the prescribed ninety (90) days. Our intent now is simply to bring to your attention some of the significant differences between the Time Warner Cable and the AT&T Agreements, and to remind you of our concern about — and the City's commitment to — parity and fairness in its dealing with all providers in the marketplace of similar video services.

We look forward to speaking with you again soon.

Very truly yours,

QUARLES & BRADY LLP

Cory L. Nestles

CLN:nia
(via facsimile)

cc Jack Herbert, President, Time Warner Cable
Bev Greenberg, Vice President of Public Affairs
Mayor Tom Barrett
Ron Leonhardt, City Clerk
Willie L. Hines, Jr., Common Council President
Ald. Robert J. Bauman, District 4
Ald. James A. Bohl, Jr., District 5
Ald. Michael S. D'Amato, District 3
Ald. Joe Davis, Sr., District 2
Ald. Robert G. Donovan, District 8
Ald. Joe Dudzik, District 11
Ald. Ashanti Hamilton, District 1
Ald. Michael McGee, Jr., District 6
Ald. Michael J. Murphy, District 10
Ald. Robert W. Puente, District 9
Ald. Willie C. Wade, District 7
Ald. James N. Witkowiak, District 12
Ald. Terry L. Witkowski, District 13
Ald. Tony Zielinski, District 14
John W. Daniels, Esq.

Jack Herbert, President, Time Warner Cable
Bev Greenberg, Vice President of Public Affairs
Mayor Tom Barrett
Ron Leonhardt, City Clerk
Willie L. Hines, Jr., Common Council President
Ald. Robert J. Bauman, District 4
Ald. James A. Bohl, Jr., District 5
Ald. Michael S. D'Amato, District 3
→ Ald. Joe Davis, Sr., District 2
Ald. Robert G. Donovan, District 8
Ald. Joe Dudzik, District 11
Ald. Ashanti Hamilton, District 1
Ald. Michael McGee, Jr., District 6
Ald. Michael J. Murphy, District 10
Ald. Robert W. Puente, District 9
Ald. Willie C. Wade, District 7
Ald. James N. Witkowiak, District 12
Ald. Terry L. Witkowski, District 13
Ald. Tony Zielinski, District 14