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Office of the City Clerk

Ronald D. Leonhardt
City Clerk

Jim Owczarski
Deputy City Clerk

March 19, 2007

Honorable Members,
Common Council
Room 205, City Hall

Dear Council Members:

The Steering and Rules Committee will hold a special meeting on Thursday, March 22, 2007, to consider approval of an agreement with AT&T relating to provision of their U-verse television service to customers in the City of Milwaukee. This agreement has been transmitted to you by the City Attorney's Office with a summary of its key provisions (summary attached).

The Committee will also hear a communication from the City Attorney relating to the status of proposed state legislation regulating video service providers. This legislation would apply to AT&T as well as to Time Warner Cable. In its current form it would result in a significant loss of local control and revenue. It has been scheduled for a hearing by a State Assembly committee on Tuesday, March 27. Approval of the AT&T agreement by the Steering and Rules Committee prior to this state hearing would improve the city's position in seeking changes to the current state proposal.

I have attached a summary of the major provisions of the current state proposal and how it compares to our franchise agreement with Time Warner Cable and our proposed agreement with AT&T. Please feel free to contact me if you have any questions.

Respectfully,

Ronald D. Leonhardt, City Clerk

Cc: Mayor Tom Barrett
Grant Langley
Vincent Moschella
Sharon Cook
Jennifer Gonda

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SUMMARY OF PROPOSED STATE LEGISLATION
RELATING TO VIDEO SERVICE PROVIDERS

(Sponsored by Rep. Phil Montgomery (R) and Sen. Jeff Plale (D))

- Franchising authority is moved from municipal level to state government (Department of Financial Institutions (DFI)). DFI is prohibited from enacting any rules to implement the legislation. DFI is required to issue a franchise within 10 days of receiving a complete application, or the franchise is deemed to be automatically approved.
- Existing cable operators such as Time Warner can opt out of their local franchise agreements and become subject to the state franchise.
- State franchises would be perpetual. (Time Warner's Milwaukee franchise is for 17 years, expiring in 2016; our AT&T agreement will be for 3 years.) Franchises can be transferred to other parties without governmental approval.
- Municipalities would continue to receive same percentage of gross revenue from providers (5% in the case of Milwaukee) but the definition of revenue to which this applies has significant exclusions that could lead to a 20 -25% reduction in actual revenues. (Current annual franchise fees from Time Warner equal approximately \$3.7 million.) Municipalities could conduct audits at their own expense once every three years (Time Warner is required to pay for annual audits; AT&T will pay for an audit at the end of the 3-year agreement.)
- No funding for PEG (public, educational and government) channels is required. Current cable operators usually pay a percentage of revenues (one or two percent) for PEG operations. (Time Warner gave Milwaukee a \$5.2 million grant that has been invested by the city to provide a revenue stream to MATA over the life of the franchise; AT&T has agreed to 2% of revenues to support PEG.)
- Municipalities would be required to pay all costs of connecting PEG channels to a video service provider's network. Cable operators are currently required to cover these costs.
- Providers could cease to carry PEG channels that are not "substantially utilized". The definition of "substantially utilized" could result in all four Milwaukee PEG channels being discontinued. (Channels: 13-educational; 14-public access; 25-City Channel; 96-public access.)
- Consumer protection provisions are minimal. State and municipalities are prohibited from creating more than FCC requires. Municipalities are prohibited from even enforcing those if there are two or more providers operating. (Both the Time Warner franchise and the AT&T have locally enforceable consumer protection provisions.)
- Local fees for right of way access or any other purpose are prohibited. (Time Warner and AT&T currently pay such fees.)
- There are no "build-out" provisions that would require entire communities to be served by a provider. (Time Warner and AT&T agreements both have build-out provisions.)
- Neither the state nor municipalities would be allowed to regulate rates.
- There are no affirmative action, equal employment opportunity or emerging business enterprise requirements (all of which are found in the Time Warner franchise and AT&T agreement).
- There are no requirements to provide free services to government and educational facilities (required in the Time Warner franchise and AT&T agreement).

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March 16, 2007

To the Honorable
Common Council of the
City of Milwaukee
Room 205 – City Hall

Re: AT&T Wisconsin Interim Operating Agreement

Dear Council Members:

Enclosed is a proposed interim operating agreement between the City and AT&T that I recommend the Common Council approve.

I believe this agreement will allow AT&T to sell U-Verse television services within the City over AT&T's broadband network to the home while preserving the City's rights and responsibilities over the public rights-of-way, and the City's contractual obligations to Time-Warner.

As you know, the City is currently engaged in litigation with AT&T over whether it is required to obtain a cable franchise from the City before rolling out this proposed video service in the City. In my opinion, this three year interim operating agreement protects the City's interests during the pendency of the litigation while fostering competition in cable services.

Before setting out the major terms of the agreement, a brief background of the dispute which prompted the negotiations and resulting agreement may be helpful.

As early as September of 2005 AT&T filed with the City requests to place advanced communications equipment in the City's rights-of-way. The City has granted these requests subject to the condition that AT&T obtain "all permits, licenses, franchises and permissions required under federal, state or local law prior" to using the equipment to provide any video programming services. AT&T also agreed to provide the City Clerk 30 days' prior written notice before using the facilities to provide video programming. AT&T itself confirmed in November of

To the Honorable
Common Council of the
City of Milwaukee
March 16, 2007
Page 2

2006, that it planned to initiate U-Verse television services over the facilities on or after December 16, 2006.

In the same letter AT&T stated that AT&T is not a cable operator, would not be operating a cable system nor would it be offering cable service and hence, according to AT&T, the company was not subject to Milwaukee's cable franchising requirements. The City Clerk responded that AT&T must comply with the City's Cable Ordinance and first obtain a franchise before offering video services in the City. In response to the City Clerk's letter AT&T reiterated its position that its U-verse TV service is not a cable service and that the company is not subject to the City's cable franchising requirements.

In early December I informed AT&T that it must comply with the City's franchising requirements and obtain a cable franchise prior to offering cable service in the City. In that same letter I also offered to negotiate the terms of a temporary authorization for AT&T during the pendency of the anticipated legal suit over the authority of the City. The results of those negotiations resulted in the attached interim agreement.

The interim operating agreement provides the City several significant benefits. The agreement also represents new commitments by AT&T which, to the best of my knowledge, are not found in any other AT&T video service agreements around the nation. Finally, the agreement closely tracks the existing Time Warner agreement to assure that both companies will be similarly treated.

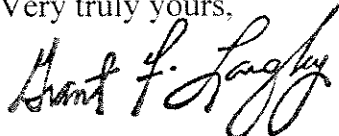
- The term of the agreement is three years.
- The City receives a 5% "license fee" of Gross Revenues related to U-verse TV services.
- The City receives an *additional* PEG Grant of 2% of Gross Revenues related to U-verse TV services.
- Gross Revenues are fairly allocated between telephone, internet and video services to determine these fees.

To the Honorable
Common Council of the
City of Milwaukee
March 16, 2007
Page 3

- The company will build-out at least 25% of the households within the Metropolitan area within 3 years. At least 25% of those households are expected to be low income households.
- The agreement sets reasonable consumer protection requirements.
- The company agrees to not discriminate, to not require exclusive contracts, nor to unlawfully impede competition.
- The agreement cannot be transferred without the City's consent.
- The company acknowledges and will comply with the Milwaukee Code of Ordinances controlling right-of-way occupancy.
- The company will provide free U-Verse service to schools and other public buildings.
- The company will provide the City a performance bond, security fund, indemnification, and insurance coverage comparable to Time Warner.
- The company agrees to a schedule of liquidated damages for violations of the agreement.
- The parties agree to an expedited dispute resolution procedure.

I believe this agreement will sufficiently protect the City's interests during the pendency of any litigation and still permit the company to roll out its service to customers in the City without delay. Therefore I recommend that the Council adopt the interim agreement.

Very truly yours,



GRANT F. LANGLEY

City Attorney

GFL:lmb

encl.

c: Mayor Tom Barrett

City Clerk Ron Leonhardt

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