

ORDINANCE No. 183538

*Approve settlement of claims with McLeodUSA Telecommunications Services, Inc.
(Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In November 2000, the City Council granted a ten year franchise to McLeodUSA Telecommunications Services, Inc., an Iowa corporation qualified to do business in Oregon, and to its successors and assigns, as approved by the City ("McLeodUSA"), to use the City streets to provide telecommunications services. Ordinance No. 175061. McLeodUSA filed an acceptance of the franchise grant in November, 2000.
2. In 2006 the City performed a routine audit of franchise fees paid by McLeodUSA and all similarly situated companies from 2003-2005. The auditor discovered irregularities in McLeodUSA's payments and the city expanded the scope of the audit to include 2001-2002. In 2007 and 2008 the parties negotiated but were unable to arrive at a settlement.
3. In 2008 the City Council authorized the City Attorney to initiate litigation to enforce the franchise. Negotiations resumed, and representatives of the City and McLeodUSA have negotiated a settlement of the past due disputed franchise fee principal and interest due from January, 2001 through and including December, 2007. McLeodUSA has otherwise agreed to comply with the terms of its franchise agreement with the City.
4. Staff recommends that the City Council approve the settlement agreement to secure the past due franchise fees, avoid potential litigation costs, and achieve legal certainty.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Utilities is authorized to execute a settlement agreement with McLeodUSA Telecommunications Services, Inc. identical or substantially similar to the one attached as Exhibit A to this Ordinance, under which McLeodUSA Telecommunications Services, Inc. shall pay the City \$1,569,878.00 in past due franchise fees and interest.

Section 2. The Council declares that an emergency exists because the public interest would be served through the prompt and final resolution of the parties' dispute; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council: FEB 10 2010

Commissioner Amanda Fritz
DSoloos/BWalters
February 2, 2010

LaVonne Griffin-Valade
Auditor of the City of Portland
By



Deputy

Agenda No. **183538**
ORDINANCE NO.
 Title

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INTRODUCED BY Commissioner/Auditor: Commissioner Amanda Fritz	CLERK USE: DATE FILED <u>FEB 05 2010</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz <i>[Signature]</i> Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland By: <u><i>[Signature]</i></u> Deputy
BUREAU APPROVAL Bureau: OCCFM Bureau Head: David C. Olson <i>[Signature]</i>	ACTION TAKEN:
Prepared by: D Soloos Date Prepared: February 2, 2010	
Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date February 10, 2010	
City Attorney Approval <i>[Signature]</i>	

AGENDA
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 5-10 minutes (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz <input checked="" type="checkbox"/>	
2. Fish	2. Fish <input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman <input checked="" type="checkbox"/>	
4. Leonard	4. Leonard <input checked="" type="checkbox"/>	
Adams	Adams <input checked="" type="checkbox"/>	