

**FINANCIAL IMPACT STATEMENT
For Council Action Items**

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator D. Soloos		Telephone No 3-5359	2. Bureau/Office/Dept. OCCFM
5a. To be filed (date) Feb 10, 2010	5b. Calendar (Check One) Regular Consent 4/5ths XX	3. Date Submitted to Budget Analyst:	

1) Legislation Title: *Approve settlement of claims with McLeodUSA Telecommunications Services, Inc. (Ordinance)

2) Purpose of the Proposed Legislation: Settle a franchise fee dispute which will immediately bring \$1,569,878.00 into the City's general fund, allow the city to avoid future litigation costs, and provide financial and legal certainty.

3) Revenue:

Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated please identify the source.

The settlement will immediately bring \$1,569,878.00 into the City's general fund.

4) Expense:

What are the costs to the City as a result of this legislation? (Please include costs in the current fiscal year as well as costs in future years) (If the action is related to a grant or contract please include the local contribution or match required) There are no costs directly associated with this ordinance. However, the City avoids significant costs because the settlement eliminates future litigation expenses.

Staffing Requirements:

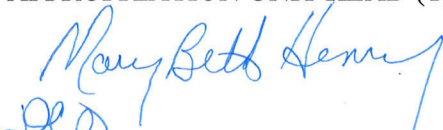
5) Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? (If new positions are created please include whether they will be part-time, full-time, limited term or permanent positions. If the position is limited term please indicate the end of the term.) No.

6) Will positions be created or eliminated in future years as a result of this legislation? No.

7) Change in Appropriations (Please reflect the dollar amount to be appropriated by this legislation. Include the appropriate center codes and accounts that are to be loaded by accounting. Indicate "new" in Center Code column if new center needs to be created. Use additional space if needed.) N/A.

Fund	Center Code	Account	Amount	Project Fund	Project No.

APPROPRIATION UNIT HEAD (Typed name and signature)



David C. Olson, Director, Office of Cable Communications and Franchise Management



CITY OF PORTLAND, OREGON

Office of Cable Communications and Franchise Management

Amanda Fritz, Commissioner

David C. Olson, Director

1120 S.W. Fifth Ave., Room 1305 • Portland, OR 97204

Phone: 503-823-0039 • Fax: 503-823-5370 • TDD: 503-823-6868

www.portlandonline.com/cable

City Council
Agenda Item
Staff Supplemental Report

TO: Commissioner Amanda Fritz

THROUGH: Office of Cable Communications and Franchise Management

FROM: Mary Beth Henry, Acting Director *MBA*
Contact Person: David Soloos, Program Manager, 823-5359

DATE: February 3, 2010

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

Requested Placement Date: Emergency, Regular Agenda on February 10, 2010

I. RECOMMENDATION

The City and McLeodUSA have been in a dispute about various terms and conditions of McLeodUSA's franchise, including the legality and amount of franchise fees, since 2001. City staff (Office of Cable Communications and Franchise Management and City Attorney) and McLeodUSA have come to a mutually agreeable settlement covering all franchise issues through December 31, 2007:

Staff recommends Council accept this settlement:

- (1) \$1,569,878 will immediately be available to the general fund.
- (2) McLeodUSA has agreed to pay its franchise fees on an expanded revenue base for the remainder of the term of the franchise.

II. BACKGROUND

In 2000 the City Council granted McLeodUSA a ten-year franchise to own and operate telecommunications facilities in city streets. As part of the compensation for McLeodUSA's use of the streets, the franchise requires McLeodUSA to pay the city 5% of its gross revenues on a quarterly basis.

In 2006 the City performed a routine audit of franchise fees paid by McLeodUSA and all similarly situated companies. The auditor discovered irregularities in McLeodUSA's payments and estimated that McLeodUSA had underpaid its franchise fees by approximately \$600,000 from 2003-2005. The city expanded the scope of the audit to include 2001-2002, and by 2008 it estimated that McLeodUSA had underpaid its franchise fees by approximately \$1,400,000 from 2001-2007, plus interest of \$800,000.

Following the audit determination, staff began discussions with McLeodUSA regarding the audit findings. In October, 2008, City Council authorized the City Attorney's Office to undertake litigation against McLeodUSA to recover the unpaid franchise fees. Since then, the parties have had on-going negotiations seeking to settle this dispute. The representatives of both parties now believe that they have achieved a mutually acceptable settlement for a total payment by McLeod of about \$1.6 million.

III. FINANCIAL IMPACT

1. Immediate direct impact: \$1,569,878.00 will be available to the general fund.
2. Ongoing direct impact: McLeodUSA will pay franchise fees each year on an expanded revenue base, which equates to an additional \$65,000 per year.
3. Indirect impacts: The settlement will provide certainty to the City.

IV. LEGAL ISSUES

With this settlement, all real and potential legal issues are resolved as all claims, known or unknown, are waived by both the City and McLeodUSA through December 31, 2007.

V. CONTROVERSIAL ISSUES: N/A

VI.

VII. LINK TO CURRENT CITY POLICIES

This settlement supports City Goals in the 2009-2010 Adopted Budget.

VIII. CITIZEN PARTICIPATION: N/A

IX. OTHER GOVERNMENT PARTICIPATION: N/A

IX. IF THIS IS A CONTRACT, DOES CONTRACTOR HAVE A CURRENT BUSINESS LICENSE? **Yes**

WHAT IS THEIR BUSINESS LICENSE NUMBER? **644526**

IS THEIR ACCOUNT WITH THE CITY CURRENT? **Yes**

IF NOT, HOW MUCH IS OWING? **N/A**