

FINANCIAL IMPACT STATEMENT

For Council Action Items

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

1. Name of Initiator Mary Beth Henry		Telephone No 3-5414	2. Bureau/Office/Dept. OCC/FM
5a. To be filed (date) May 27, 2010	5b. Calendar (Check One) Regular Consent 4/5ths X	3. Date Submitted to FPD Budget Analyst: May 26, 2010	

1) Legislation Title:

Authorize City Attorney to commence legal proceedings for franchise enforcement.

2) Purpose of the Proposed Legislation Authorize the City Attorney to commence legal proceedings to enforce the terms and conditions of the franchise and Permit agreements entered into by FTV, WilTel, and TCG Oregon and to participate in FCC proceedings that have a direct bearing on the enforcement of City franchises in order to protect the City's interests.

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. Generate revenue. The Office is not able to make an estimate at this time.

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)

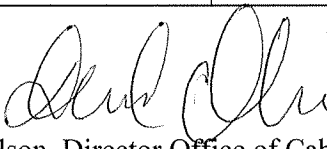
A litigation fund was established by the City Council within the OCC/FM budget for this purpose and carried over in the Spring BuMP.

5) Will any positions be created, eliminated or reclassified in the current year as a result of this legislation? (If new positions are created please include whether they will be parttime, full-time, limited term or permanent positions. If the position is limited term please indicate the end of the term.)

N/A

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

APPROPRIATION UNIT HEAD (Typed name and signature)



CITY OF PORTLAND, OREGON

Office of Cable Communications and Franchise Management

Amanda Fritz, Commissioner

David C. Olson, Director

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City Council Agenda Item Staff Supplemental Report

TO: Commissioner Amanda Fritz

THROUGH: Office of Cable Communications and Franchise Management

FROM: David C. Olson, Director 
Contact Person: David Soloos, 823-5359

DATE: May 25, 2010

RE: Authorize City Attorney to commence legal proceedings for franchise enforcement.
(Resolution)

Requested Placement Date: Regular Agenda on June 2, 2010

I. RECOMMENDATION

The Office of Cable Communications and Franchise Management (OCCFM), in consultation with the City Attorney's office, recommends that Council approve this Resolution authorizing litigation to enforce the terms of several franchises. OCCFM and the City Attorney's office have tried to obtain full cooperation with an audit and payment of TCG Oregon's permit fees. In addition, FTV and WilTel stopped paying franchise fees two years ago. The principal and interest owed is estimated at \$450,000. The Resolution also authorizes the City Attorney to commence legal proceedings to enforce the terms and conditions of other franchises or Permits if the Commissioner in Charge and the Office of Cable Communications and Franchise Management determine that other companies are failing to pay full compensation and otherwise failing to comply with their franchise or Permit obligations. Finally the Resolution authorizes the City to file in FCC proceedings that have a direct bearing on the enforcement of City franchises in order to protect the City's interests.

II. BACKGROUND

In the last eight months, the Office of Cable and Franchise Management and the City Attorney's Office have used previous franchise enforcement authorizations from the Council to collect \$4.7 million in past due franchise fees from other telecommunications providers.

TCG Oregon, FTV and WilTel obtained permits and franchises between 1998 and 2002. In 2009 OCCFM entered into an interagency agreement with the Revenue Bureau to perform a routine

audit of TCG's permit fees for calendar years 2006 to present. Despite repeated correspondence and phone calls, TCG Oregon has not fully complied with repeated requests for records.

FTV and WilTel pay franchise fees that are the greater of either a Minimum Annual Fee, or a fee based on the linear footage of facilities in the streets. In 2008, FTV and WilTel informed the City that they would no longer pay linear foot franchise fees, claiming that all their facilities had been transferred to their parent company, Level 3 Communications LLC. FTV and WilTel retained their franchises after the alleged transfer, and owe at least Minimum Annual Fees for 2008, 2009 and 2010.

Upcoming proceedings at the FCC will have a direct bearing on and may adversely affect the City's ability to enforce its franchises and permits;

III. FINANCIAL IMPACT

A favorable settlement or legal ruling may result in the payment of back principal, late payment interest, and annual ongoing franchise fees.

IV. LEGAL ISSUES

See above

V. CONTROVERSIAL ISSUES

See above

VI. LINK TO CURRENT CITY POLICIES

<http://www.portlandonline.com/auditor/index.cfm?c=28215>

VII. CITIZEN PARTICIPATION

N/A

VIII. OTHER GOVERNMENT PARTICIPATION

N/A

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

TCG Oregon: No

FTV: No

WilTel: No

WHAT IS THEIR BUSINESS LICENSE NUMBER?

TCG Oregon: N/A (old number was 682337)

FTV: No

WilTel: N/A (old number was 421989 or 664201)

36790

IS THEIR ACCOUNT WITH THE CITY CURRENT?

TCG Oregon: No

FTV: No

WilTel: No

IF NOT, HOW MUCH IS OWING? Unknown