

ORDINANCE No. 184363

*Authorize franchise fees settlement with MCIMetro Access Transmission Services, LLC
(Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In 1997, the Council approved an ordinance granting a ten-year franchise to MCIMetro. Ordinance No. 169230. The Council later extended the franchise through December 31, 2011. Ordinance No. 183381.
2. MCIMetro's franchise establishes certain terms and conditions for the franchisee to occupy and operate telecommunications facilities within the City streets...
3. The City collects franchise and utility license fees from MCIMetro. The franchise provides for a fee of 5% of MCIMetro's gross revenues on a quarterly basis as compensation for use and occupancy of the right-of-way.
4. The Office of Cable Communications and Franchise Management ("OCCFM") entered into an Interagency Agreement with the Revenue Bureau for audit services of all 50 franchisees and selected utility licensees. During 2009 and 2010, the Revenue Bureau, with guidance from OCCFM, conducted routine audits of the franchise fees paid by MCIMetro and other similarly situated companies.
5. The Revenue Bureau, in consultation with OCCFM, determined that MCIMetro had not correctly calculated its franchise fees for the franchise fee period January 1, 2006 to June 30, 2010, most notably revenues from network access surcharges and carrier access charges.
6. Representatives from OCCFM and MCIMetro have agreed on the extent of the audit adjustment, in light of the auditor's determinations.
7. OCCFM staff recommend that the Council agree to a complete settlement and waiver of any further fee adjustments in connection with this audit, for the period January 1, 2006 to June 30, 2010.
8. Staff recommends that the City Council authorize the settlement as a reasonable resolution of this matter.


NOW, THEREFORE, the Council directs:

- a. Commissioner Amanda Fritz and the City Auditor are authorized to sign the Settlement Agreement in the form attached as Exhibit A.

- b. On or before thirty (30) days after this ordinance becomes effective, MCIMetro shall provide a written acceptance of the City's proposal by filing a fully authorized, executed counterpart of Exhibit A with the Office of Cable Communications and Franchise Management, meeting the approval of the City Attorney as to form. Any failure on the part of MCIMetro to file such written acceptance within such time shall be deemed an abandonment and rejection of this ordinance, and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms contained in this ordinance.

Section 2. The Council declares that an emergency exists because the public interest would be served by the City and MCIMetro to promptly resolve this matter, allowing MCIMetro and the City to close their respective financial records regarding this dispute; therefore, this Ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council: JAN 12 2011
COMMISSIONER Amanda Fritz
Dolson/JLi
January 4, 2011

LaVonne Griffin-Valade
Auditor of the City of Portland
By 
Deputy

Agenda No. **184363**
ORDINANCE NO. **184363**
Title

*Authorize Franchise Fee Settlement with MCIMetro Access Transmission Services, LLC)
(Ordinance)

<p>INTRODUCED BY Commissioner/Auditor: Commissioner Amanda Fritz</p> <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Adams</p> <p>Position 1/Utilities - Fritz <i>Tom Carl</i></p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p> <p>BUREAU APPROVAL</p> <p>Bureau: OCCFM Bureau Head: David C. Olson <i>David C. Olson</i></p> <p>Prepared by: MB Henry Date Prepared: January 4, 2011</p> <p>Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date January 12, 201</p> <p>City Attorney Approval <i>Bryam Walters</i></p>	<p>CLERK USE: DATE FILED <u>JAN 07 2011</u></p> <p style="text-align: center;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p> <p>ACTION TAKEN:</p>
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AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input checked="" type="checkbox"/></p> <p>Total amount of time needed: <u>10 minutes</u> (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	✓	
Adams	Adams	✓	