

RESOLUTION No. 36790

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

WHEREAS, By Ordinances 172863 and 175063, the Portland City Council granted franchises to FTV Communications, LLC ("FTV") and Williams Communications, Inc., the predecessor in interest to WilTel Communications LLC ("WilTel") to use the streets within Portland to provide telecommunications services. By Ordinance 173990 the Portland City Council granted a temporary revocable permit ("Permit") to TCG Oregon to use the streets within Portland to provide telecommunications services; and,

WHEREAS, FTV, WilTel, and TCG Oregon accepted the franchise and Permit grants, and constructed and maintained their telecommunications facilities within the City streets; and,

WHEREAS, As one of the franchise and Permit conditions, FTV, WilTel and TCG Oregon agreed to pay franchise and Permit fees to the City as compensation for the rights and privileges granted under the franchises and Permit; and,

WHEREAS, FTV, WilTel and TCG Oregon have failed, refused or neglected to pay the City of Portland the full compensation provided for under the terms of their franchises and Permit; and

WHEREAS, TCG Oregon also has failed to comply with Permit terms requiring cooperation with City audits;

WHEREAS, 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;

WHEREAS, 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;

WHEREAS, Any litigation and associated expense required to enforce the franchises or Permit is expected to span at least two fiscal years. There is money in litigation funding in the 2009-2010 budget for the Office of Cable and Franchise Management, which shall be carried over into the budget of 2010-2011 to assist in the litigation authorized by this Resolution; and

WHEREAS, NOW, THEREFORE, BE IT RESOLVED the City Attorney is hereby authorized and directed to commence legal proceedings to enforce the terms and conditions of the franchise and Permit agreements entered into by FTV, WilTel, and TCG Oregon.

WHEREAS, BE IT FURTHER RESOLVED that the City Attorney, with the approval of the Commissioner in Charge of the Office of Cable Communications and Franchise Management, is hereby authorized to participate in FCC proceedings that have a direct bearing on the enforcement of City franchises in order to protect the City's interests.

WHEREAS, BE IT FURTHER RESOLVED that the City Attorney, with the approval of the Commissioner in Charge of the Office of Cable Communications and Franchise Management, is hereby authorized 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.

Adopted by the Council: **JUN 02 2010**

Commissioner Amanda Fritz
David Olson
Prepared by: Thatcher/Henry
May 25, 2010

LaVonne Griffin-Valade
Auditor of the City of Portland

By: *Emily Matasa*

Deputy

810

140

Agenda No.

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Title

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INTRODUCED BY Commissioner/Auditor: Fritz	CLERK USE: DATE FILED <u>MAY 27 2010</u>
COMMISSIONER APPROVAL	LaVonne Griffin-Valade Auditor of the City of Portland
Mayor—Finance and Administration - Adams	
Position 1/Utilities - Fritz <i>To lead</i>	
Position 2/Works - Fish	By: <i>[Signature]</i> Deputy
Position 3/Affairs - Saltzman	
Position 4/Safety - Leonard	
BUREAU APPROVAL	ACTION TAKEN:
Bureau: OCCFM Bureau Head: David C. Olson <i>[Signature]</i>	
Prepared by: Mary Beth Henry Date Prepared: May 25, 2010	
Financial Impact Statement	
Completed <input type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input checked="" 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 June 2, 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: 10 mins (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"/>	