

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL CORRESPONDENCE**

**TO:** Mayor and City Council

**FROM:** Ben Gorzell Jr. CPA, Public Utilities Supervisor/Assistant Finance Director  
Andrew Martin, City Attorney

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES TO:** Melissa Byrne Vossmer, Assistant City Manager; Milo D. Nitschke, Director of Finance; Thomas G. Wendorf, Director of Public Works; file

**SUBJECT:** Settlement Agreement with Western Integrated Networks (WIN)

**DATE:** August 21, 2003

**SUMMARY AND RECOMMENDATION:**

This Ordinance approves an agreement to settle with Western Integrated Networks, L.L.C. (WIN) and all of its debtor subsidiaries; releases \$200,000 to WIN; and authorizes the City Attorney and Bankruptcy Counsel to execute and file all of the necessary documents to facilitate settlement of this matter.

Staff recommends approval of this Ordinance.

**BACKGROUND INFORMATION:**

On April 27, 2000, the City granted a non-exclusive cable franchise agreement to Western Integrated Networks, L.L.C. (WIN). The franchise agreement was for a term of fifteen years and allowed WIN to utilize the City's public rights-of-way to construct, maintain and operate a City-wide cable television/broadband telecommunications system. The system was to provide cable television programming, high-speed internet service, and other related services to residential and business customers throughout the San Antonio area.

Under Section 8c. of the franchise agreement, WIN was to complete construction of its system within five (5) years of the effective date of the agreement. The section required that WIN meet the following construction thresholds during the five (5) year period: 10% within 2 years; 35% within 4 years; and 100% by the end of the five year period. Currently, WIN has failed to construct any facilities within the City. Pursuant to the terms of the agreement, the City received the following payments:

- ☐ \$1 Million prepayment of franchise fees (provision specified City would retain as liquidated damage in the event WIN failed to construct its system);
- ☐ \$100,000 Security Deposit
- ☐ \$50,000 Contribution to a Scholarship Fund (San Antonio Education Partnership)
- ☐ \$15,000 for support of Public, Educational, & Governmental Programming

On March 11, 2002 in the Denver, Colorado Bankruptcy Court, WIN filed for bankruptcy under Chapter 11 of the Bankruptcy Code. In November 2002 and February 2003, the City notified WIN of its breach of the construction requirements under the franchise agreement and the City's intent to terminate the franchise agreement. WIN responded in February of 2003 to the City's notices and demanded a return of the aforementioned payments totaling \$1,165,000.

Since that time, the City and WIN have been in discussions to attempt to settle this dispute. WIN's assertions were that the City had suffered no loss and that the \$1 Million prepayment was a penalty and therefore unenforceable under Texas contract law. The City's position is that damages to the City included lost competition, loss of an institutional network, and loss of additional incremental franchise fee revenues, which collectively exceed the \$1M liquidated damage, and, therefore, validated the liquidated damage provision.

#### **POLICY ANALYSIS:**

The City used the outside legal firm of Miller, Canfield, Paddock, & Stone to assist the City in resolving this dispute. While the City's position has been that we have a sound contract claim, negotiations were recommended to try resolve this dispute in an effort to avoid the cost and risk associated with potential litigation. Through these negotiations, a settlement with WIN has been reached and would require that the City return to WIN \$200,000 of the previously mentioned payments received by the City under the franchise agreement and the City would retain the balance of \$965,000. We believe this a reasonable settlement taking into consideration the cost and risk associated with litigation.

The settlement agreement, conditioned upon City Council approval, has been filed in bankruptcy court. According to WIN's bankruptcy counsel, no objections from the bankruptcy estate's creditors committee are anticipated, and based upon this information, it is expected that the Bankruptcy court will grant the motion. Ultimately, WIN will reject its franchise agreement with the City in the bankruptcy proceedings, most likely as part of a reorganization plan, which effectively terminates the franchise.

#### **FINANCIAL IMPACT:**

Under terms of the settlement agreement, the City will release \$200,000 to WIN and retain the balance of payments made to the City of 965,000. Also, as these funds have been in the possession of the City, the City earned approximately \$100,000 in interest earnings for a total of \$1,065,000.

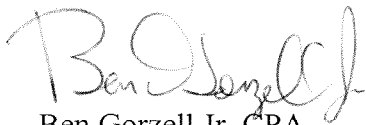
Of the payments made to the City, \$65,000 has already been expended through a \$50,000 contribution to the San Antonio Education Partnership and \$15,000 for support of public, educational, and government programming which were requirements under the franchise agreement.

**COORDINATION:**

The City used the legal firm of Miller, Canfield, Paddock, & Stone to assist in the resolution of this matter.

**SUPPLEMENTARY COMMENTS:**

The ethics disclosure form is not required.

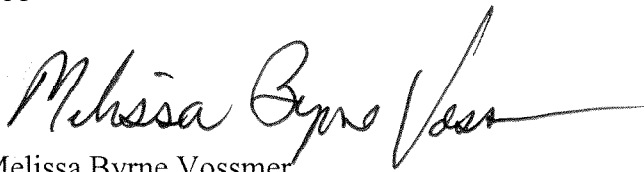


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