REGULAR MEETING
October 26, 1998

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, October 26, 1998, at 6:35 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Dennis Doyle, Forrest Soth, Wes Yuen, Cathy Stanton and Evelyn Brzezinski. Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Library Director Shirley George, City Utilities Engineer David Winship, and City Recorder Darleen Cogburn.

CITIZEN COMMUNICATION:

There was no one who wished to speak.

COUNCIL ITEMS:

Coun. Stanton reported that she had attended the Voters Forum at Whitford Middle School and talked about the Library Bond Measure. She said there was an open house for the Metro Regional Transportation Plan, scheduled for that week, to discuss how they would like to allocate Federal dollars and to garner input from citizens.

Coun. Brzezinski reported that she spent time in the proposed next Sister City, Cluses, France. She said it was beautiful and close to good skiing facilities in the Alps. She noted they met with the Mayor of Cluses to discuss the relationship between the two Sister Cities and reported the Mayor and his wife would be in Beaverton in two weeks. She said she would like to ask the Mayor to attend the Joint meeting with the Fire District.

Coun. Yuen noted they had an upcoming meeting with the Tualatin Hills Park and Recreation District (THPRD) and he wondered if they could change it from a dinner to a coffee or dessert meeting. He said he knew they were obligated by an intergovernmental agreement to have a meeting but it did not state they were required to have dinner.

Mayor Drake said Ron Willoughby, General Manager for THPRD, wanted to update the Council on activities. He said if the Council would rather have just a coffee meeting, they could do that at City Hall. He said the point of the meeting was to conduct business and enhance working relationships.

Coun. Yuen said the meeting with THPRD was on a Wednesday night and not on the normal Monday, the night the Council usually met and it constituted another night out of his busy week.

Coun. Brzezinski said it was entirely up to the number of items on the agenda, if it was a formality that they needed to meet annually and the format would be a quick update on where they were, then she agreed with Councilor Yuen. She said at the last meeting there were some substantive issues that needed to be discussed and she felt the Council would be in favor of a dinner meeting when that was the case. She stated she would vote for a shorter meeting if there were just a few items to discuss.

Coun. Doyle said THPRD cherished the opportunity to meet with other organizations and their presentation last time was approximately one hour long. He said depending on what THPRD's agenda was, it might be too late to change the format of the meeting. He said it would be wise to check with them, since they were doing the presentation.

Mayor Drake said at that late date, he could see if they could keep it to a shorter meeting, he said they could speed up the presentation.

Coun. Soth commented that he would not favor speeding up a presentation merely for the purpose of shortening any meeting.

Mayor Drake clarified that he meant shortening just the length of the evening.

Coun. Yuen said he agreed with what Couns. Soth and Doyle said, and if there was an agenda and purpose to the meeting then he was in favor of it. He clarified that his idea was that if there was not much of an agenda why have a two-hour meeting, since they were all busy people, and he thought they needed to be careful of their own time.

Mayor Drake said he would talk to Willoughby the next day, and find what the content of the meeting was and what they wanted to present to the Council. He said since they were the City's parks provider, they usually had more to tell the Council.

Coun. Brzezinski reiterated that Coun. Yuen was not saying let's not have the meeting, let's not turn it into a two-hour meeting just because dinner was provided.

Coun. Yuen noted that one of the signals on Jenkins Rd., near the driveway into the Beaverton Mall on the Cub Foods side was not working and caused problems for the intersection.

Steve Baker, Operations and Maintenance Director asked if the signal was completely out.

Coun. Yuen said the left turn signal worked but the main signal was out.

Coun. Yuen commented that the next week they would have one of those "stealth" issues, the Buildable Lands Analysis, which was important because it concluded that they would not have enough land to meet Metro's requirements. He said they would be asked to make choices that would shape the City for years to come. He expressed his concern that the citizens would not be aware of what was happening and people complained that sometimes decisions were made outside the public hearing process. He said decisions that had enormous implications were made and no one realized how enormous those implications were until several years later. He reiterated his concern about the issue and the fact that citizens would not have an opportunity to understand what was being planned.

Mayor Drake pointed out that none of the changes they would talk about would be implemented without the public hearing process and none of it was being done in a vacuum, it was part of the Functional Plan requirements. He said he thought Coun. Yuen was misunderstanding the intent of the work session. He explained that it would be to get general direction from the Council, and then come back and go through the normal process to change the Codes.

Coun. Yuen stated that he did understand, the Council would choose to pursue a general direction, and depending on which way they went the momentum would go that way. He said if the Council chose a direction the Citizens didn't like, they would oppose that direction at every step of the process.

Mayor Drake said he disagreed, and pointed out that they had been looking at the Functional Plan for the past three years and the issue discussed that night's meeting was part of it. He said they had some options, including asking Metro for an exception to the Functional Plan numbers. He noted nothing was being done differently with the Buildable Lands Analysis, it was simply an analysis of the work done to date. He explained that if the City was going to meet the numbers that they thought they could meet, they needed to implement some of the tools Metro had offered. He said if not, then an alternative was to try to meet those numbers part way, some of the way, or say to Metro that the City was giving up and could not do any more.

Coun. Yuen said he had read the report and the point the Mayor raised about choosing to ask Metro to allow the City to not meet the requirements

was an important issue to consider. He noted that one of the things necessary to not follow Metro's requirements, was the support of the citizens.

STAFF ITEMS:

There were none.

PROCLAMATION:

Mayor Drake declared a proclamation for Darleen Cogburn as Certified Municipal Clerk from the International Institute of Municipal Clerks. He thanked her for her outstanding work as City Recorder and read a short biographical outline leading to her prestigious award.

World Population Awareness Week

Coun. Doyle reminded Council of the Beaverton Arts Commission *Showcase 98* celebration on November 7, which would be held at the Beaverton Mall. He said it was a great event and hoped everyone would attend.

Coun. Soth noted that was the same weekend as the League of Oregon Cities annual conference.

Coun. Stanton noted that November 7, was the Fall Clean-up Day at the old City Hall as well. She said the clean-up site was at the corner of 5th and Western Ave.

CONSENT AGENDA:

Coun. Yuen MOVED, SECONDED by Coun. Soth that the consent agenda be approved as follows:

Minutes of the regular meetings of July 13, 1998 and July 20, 1998

98-284 Liquor Licenses: 7-Eleven (Change of Ownership)
Ernesto's Italian Restaurant (Extend Premises to Outside Patio)

98-285 Traffic Control Board Issues 392 through 397

Contract Review Board:

98-286 Construction Contract Amendment – Storm Drain Maintenance and Replacement (SW Western Avenue Storm Drain Improvement) Project 3950

Coun. Yuen abstained from voting on the minutes.

Coun. Stanton noted she had given the corrections on the minutes of July 20, to Darleen Cogburn, City Recorder.

Coun. Yuen referred to AB 98-285 and noted that Terry Moore of the Tualatin Hills Park and Recreation District requested that TCB 396 be pulled for separate consideration. He explained that Council did not feel that was appropriate and did not pull that part of AB-285 for separate consideration.

Question called on the motion. Couns. Yuen, Brzezinski, Doyle, Soth, and Stanton voting AYE. Motion CARRIED unanimously (5:0)

WORK SESSION:

98-287 Issues Relating to Telecommunications Franchise Ordinance

Bill Scheiderich, City Attorney gave a brief presentation. He noted that the Council enacted franchises (contracts) between GTE, US West, AT&T, Fiber Optic, and Electric Light Wave. He reported that those present that night intended to provide local exchange service or run long distance cable services through Beaverton. He stated that potential providers needed to have some contractual relationship with the City in order to use City managed property for a profit making business. He affirmed the City had drafted an ordinance that would not be a franchise per say, but would state the general terms by which each of the providers actually occupied public right-of-way (ROW).

Scheiderich said Metropolitan Area Communications Council (MACC) (which was formed to regulate cable television), took on the effort to review issues raised by the Federal Telecommunications Act in 1996, which encouraged competition in the industry, and also deregulated the Telecom industry in Oregon. He said MACC drafted an ordinance that he felt was too aggressive, and what he presented Council that evening was a middle ground, compromise draft. He explained it was a draft of an ordinance that went as far as it needed to protect the City's interest in maintaining the integrity of ROW, but did not require persons not presently using the ROW to register with the City. He reported they had many discussions with the providers as to the fair basis of compensation for ROW. He explained that the ordinance used the City of Portland example because they had a staff of five persons who did nothing other than regulate utilities in the ROW. He said he had adequate assurance of Portland's figures for appropriate ROW rent for long distance providers who didn't need unlimited access, but just wanted a route that crossed ROW. He noted the "rent" amount would be $2.72 per linear foot.

Scheiderich noted that many examples of verbiage and price came from Portland's example, and Tigard and Hillsboro were closer matched to Beaverton's interest as compared to Portland. He said Portland had literally run out of room, which was not an issue here. He commented he had found that the Oregon Utilities Commission had adequate provisions

for what happened when there was no remaining space, and existing providers would be asked or required to make extra capacity available to others. He noted that where he found it was regulated by the State, he left it to State regulation. He explained that the advantage of having the ordinance in place at that time, was that the contracts that would be written and be presented to Council, would freeze the relations with the providers in place regardless of what the Oregon legislature might do by way of deregulation.

Coun. Brzezinski asked if he could tell her where the MACC model was too aggressive.

Scheiderich said the MACC model wanted registration by all providers and that raised some taxation issues on companies that had no local nexus. He said he was not sure if that applied to all existing franchisees, and since those came up for renewal soon, it was not worth upsetting the existing providers. He said Federal law required that all new providers be treated on a competitively neutral basis and barriers were not imposed to entry. He noted that there was some case law generated out of the Federal Communications Commission (FCC) and to a lesser extent, courts around the country, as to what those terms meant. He said he was satisfied (although he was certainly willing to hear otherwise from the providers that did not cross any of those prohibited barriers in Federal Law) as to treating similarly situated providers equally. He said he drafted a provision in the ordinance that said (on an individual basis) the Council might find that a local provider should not be charged a fee that was a percentage of revenue because of unique circumstances attributed to that provider. He pointed out that the City would leave itself the right to deal with some providers individually.

Coun. Brzezinski asked what did he change in the City's draft that differed from MACC's model.

Scheiderich said they did not require a performance bond that said that if a provider went out of business they should provide a source of money so their business could be continued.

Coun. Brzezinski referred to what he said about it being related to existing franchises. She asked what the MACC model said.

Scheiderich said he interpreted the MACC model to mean that it would be applicable to all, even those presently doing business under a franchise which would require renegotiations under an existing franchise.

Coun. Brzezinski asked if, when the current franchises came up for renewal, they would come under the ordinance.

Scheiderich said that was correct.

Coun. Brzezinski asked if only the new providers were to be given competitively new opportunities.

Scheiderich said it required that they treat all existing and new providers on a competitively neutral basis. He said there had been a lot of thought given as to how they should treat a Competitive Local Exchange Carrier (CLEC) and noted that the State of Oregon (by statute) did not treat a competitive provider the same as it treated an incumbent provider. He defined an incumbent provider as being required to offer its service to all askers within a geographic area; its being rates controlled by the State of Oregon (similar to electric or natural gas rates), and it receiving some perks in exchange, by way of which of its charges could be passed on to consumers. He said they gave some consideration to the fact that Oregon law treats those so called incumbent providers differently, and said cities would be limited as to what they could charge for a franchise fee. He said Oregon law predated the Federal law and that left the possibility open that new providers could be treated differently because Oregon law did not impose any limits on what the City could deem a reasonable fee for use of its ROW. He said this ordinance treated all local service providers pretty much the same and it was a non-aggressive approach in that regard.

Scheiderich said the MACC model sought a performance bond, for the cost of one's operations generally. He explained that the City would normally require a bond be kept in place for industries that were crucial to the public, health, safety and welfare. He said that if the company were to stop doing business or had a strike where they were not making regular collections, then the City would have a have a source of funds to draw on to contract with outside forces or its own forces to take over the business. He noted that the MACC model purported to do that. He referred to the Incumbent Local Exchange Carriers (ILEC) and said that area was regulated by the State and the competitive carriers were only doing business in Oregon and if competition was allowed it would mean their customers would be required to find another provider.

Scheiderich said he was recently told that MACC had put out a new version of its model. He reported that in the earlier MACC model it required that any changes of ownership be sent to the City for review, which was a model taken by MACC from the cable television franchise, where the City still (under Federal law) may scrutinize the ownership of cable television facilities. He said that Federal law limited the Cities interest to one's financial and legal capability to make good on one's promises to have insurance in effect, etc. in use of ROW, and did not go to the quality of service whatsoever. He said this draft ordinance took the approach that the City did not have any basis for approving or denying a change of ownership, but only wanted it as a matter of information. He said the City wanted to be informed of anyone to whom the facilities in the ROW were sold and who thereby took on the responsibility of maintaining them. He said the City would want to have notice of who that person was so they could make sure that person had a franchise or applied for a new

one or assumed the obligations of the seller. He said as to pure changes of ownership this ordinance did not assert any City interest in that. He said those were the major differences in the MACC model.

Coun. Soth referred to Scheiderich's statement earlier about the possibility of requiring one company to open the use of their underground conduits, to the competition. He noted that raised the question of whether or not that would have the effect of requiring that company to operate as a common carrier. He asked, if that was the case, then would that constitute an interference of interstate commerce.

Scheiderich explained that the "buzz word" for it was "required co-location," and if there was capacity already in the ground (such as empty conduits), they would have to show proof or cause as to why they could not buy that conduit as opposed to digging another trench in the ground. He said the area was already regulated to some extent by the State, and by way of co-location. He explained that there had been arguments raised referring to the "taking" of private property, and the government's interest caused the provider to give up the capacity as put in the ground by sale to another, even if the sale was on commercial and reasonable terms, as opposed to being able to reserve that empty pipe in the ground for its own future use. He said in some cases, the government interest in making the provider give up that extra capacity hadn't been shown to be strong enough to justify the government's attempted forcing the issue of co-location.

Coun. Soth wondered about a new provider renting space in the conduit for his own purposes.

Scheiderich said they would have a lease fee of 1% of revenue and the responsibility would lie with the original franchisee. He said the approach was that whoever owned the capacity, paid the fees.

Coun. Soth asked if this ordinance was flexible enough to deal with the federal preemption issues, which had been debated in the National League of Cities over the past four years.

Scheiderich said they had a re-opener clause, which gave each franchise a nominal 10-year contract. He noted that if an enactment attempted to supersede any arrangements in the contract with the provider then the City would have the right to re-open the contract. He explained that if a contract is superseded then the exchange rights and obligations should give the City the right to draft an equivalent deal in different terminology.

Scheiderich said there was a "blank "' in the draft that was a minimum annual franchise fee charged to all providers. He explained that the local standard seemed to be $3000 and the City of Tigard called it an application fee. He noted that Portland charged $5000 per year with a $1000 year escalator. He said the minimum franchise fee appeared to be a figure intended to reflect the City's cost to regulate the provider

generally. He pointed out that the fee amount was a subject for Council direction. He said if Council directed he could find out what all the local municipalities charged and they could do some comparison.

Mayor Drake said that would be helpful.

Coun. Soth asked if Scheiderich had checked with the other cities within the MACC franchise area as to their views. He asked if Washington County had been involved.

Scheiderich said most of the cities had worked with the MACC model and had come up with abbreviated forms. He reported that presently Washington County did not have any right to charge a franchise fee for use of County ROW. He said there was a proposed law that did not make it out of Legislative committee in 1997, which essentially said that the State Department of Revenue would administer a franchise for all public ROW within the State, and return it to cities and counties on a per capita basis. He explained that would give counties a franchise fee that they didn't presently have.

Coun. Stanton thanked him for the response to her questions. She referred to her question on general indemnification on page 13 of 14, the last five sentences, and said it still did not make sense to her. She asked Scheiderich to clarify it by reading it out loud.

Scheiderich read the section called "indemnity obligation." He noted the word "of" should be added to "…intentional wrongful act or omission of the grantee…"

Bob McClaugherty from Metropolitan Fiber Service, (MFS) World Com, California, Paul Andrulis from MFS, World Com, Illinois, and Andrea Pitman, with MCI, Texas addressed Council.

Bob McClaugherty gave Council a piece of high-density plastic tubing that he explained was a representation of what went in the ground in the ROW. He said it was two inches inside diameter or overall two and three-eighths inches and they put three of them together and that went into a 5-inch hole. He displayed the fiber cable, which went into the conduit and passed the samples around and noted the sizes were on the cable. He attempted to relate the size of the cable he passed around the Council in terms of what size was already utilized in ROW by the placement of copper cables. He said the 96-fiber cable he displayed had a telephone line capacity of one million, five hundred forty-eight thousand two hundred and eighty-eight lines. He said if you put that into copper cables (like the local exchange carrier) it would be in about 6 feet by 6 feet in the ROW. He compared a 192-fiber cable and said it could accommodate three million, ninety-six thousand five hundred and seventy six lines, roughly an 8.5 foot by 8.5 foot encroachment. He said there were 384 fiber cables out there and noted that they were only placing three because glass was inexpensive compared to copper, and as the capacity was exceeded they

would do a “pull in, pull out” routine. He explained that they would take in empty duct, pull the new larger cable in the empty duct and then pull the smaller cable out so they could reuse it. He concluded by saying that was the reason for using the two-inch conduit with such a small cable going in.

Andrea Pitman said she was Municipal Affairs Specialist and worked with many cities throughout the United States and it was always a pleasure to work with the City Council or the legal department. She explained that there were fewer problems when they worked together on the ordinances.

Paul Andrulis said he was an attorney with MCI World Com, the parent company of Metropolitan Fiber Systems of Portland and the parent company of Brooks of Oregon and MCI Metro also in Oregon. He said World Com started as a small re-seller in Mississippi, and grew through 80 acquisitions in 10 years. He said the most recent merger was with MCI Communications, subsequently the name was changed to MCI World Com.

Andrulis stated that they liked to be involved in the first step of drafting ordinances from the start. He said he had the opportunity to speak with Scheiderich a few times and was pleased to see a number of World Com’s comments included in the ordinance. He noted that, based on the Telecom Act of 1996, all providers had to be treated in a competitively neutral and nondiscriminatory manner. He said it was their belief that the intent behind the 1996 Act was to encourage and promote competition to provide municipalities such as Beaverton with lower cost services than what the incumbent was currently providing. He noted that the incumbent in this area was GTE and the difficulty his company had was being treated on the competitively neutral basis mandated by the law. He said they came into a city and offered their services at a reduced rate compared to what the incumbent offered to residents. He explained that there were some cases where the City would require them to pay for the use of the ROW, which they did not have a problem with, but they did have a problem when the incumbent did not have to pay. He said they couldn’t compete if they were paying a percentage of revenue, but the incumbent was not and their position was they should be treated in a non-discriminatory manner.

Andrulis said World Com understood that sometimes Cities were in agreements with the incumbent that could not be broken as a matter of contract law. He commented that on the other hand, World Com’s position was that they were entitled to be treated in a non-discriminatory fashion. He stated that they believed it was part of the City’s responsibility to make the incumbent (eventually when their contract expired) become obligated under the same terms and conditions as what World Com would pay. He noted that was the only way true competition would be created.

Andrulis said Scheiderich also touched on another matter that he would like to comment on. He explained that often the incumbents might say the new companies were only providing service to commercial customers

while (by law) they (the incumbents) had to provide universal service to everyone, even rural customers way out in the middle of nowhere. He reported that World Com had to make substantial contributions to a Universal Service Fund (USF), and noted that GTE took money from the USF in order to provide service universally. He concluded by saying World Com's biggest interest was to know they were paying their share for the incumbent to provide service and it was World Com's desire to be treated like the incumbent.

Mayor Drake said his comments were fair and affirmed that would eventually be the intent. He said the Council traditionally treated people fairly and attempted to be as equitable as possible. He reminded Andrulis that the City was currently in an agreement with GTE and it was the first to expire of the current agreements.

Coun. Brzezinski asked when the current franchise with GTE expired.

Scheiderich said GTE's contract would expire in 2002.

Coun. Brzezinski asked if this ordinance was in effect, and another provider came in the year 2000, would they have to pay the franchise fee for the ROW two years before GTE would have to pay.

Scheiderich reported that GTE was currently paying 4.03 percent under state law applicable to GTE and US WEST only in Beaverton. He said any amount the City charged was a fee effectively above 4 percent that might be listed separately on City residence phone bills as a "privilege" tax. He noted that the Oregon Public Utility Commission recently ruled that fees paid to cities and others for construction permits or excavation permits were intended to reimburse staff time spent to review plans. He said those fees could be deducted from the percentage revenue computation and now they were not deductible. He said they would notify GTE of their intent to scrutinize its fee payments accordingly.

Coun. Brzezinski asked if when the franchise with GTE was renewed would they operate under the same rule as new franchises.

Scheiderich noted that they were operating under essentially the same rules now. He explained that the terminology in the current franchise between the City and GTE was slightly different and the City tracked it as much as they could.

Coun. Soth asked about a situation where the new provider was charged a fee whereas the present provider was not charged. He clarified that he did not think it was applicable in Beaverton, but asked if an example could be given.

Andrulis said there were numerous cities that charged some of the Incumbent Local Exchange Carriers (ILEC). He said the providers had a standard that they were allowed to be treated in a non-discriminatory,

competitively neutral fashion and the cities' response was basically "so what."

Coun. Soth asked if it could be described as "the good old boys network." He explained it as if the incumbent was here for two hundred years before anyone else showed up on the scene and therefore the City was obliged to protect them because they had been providing that service.

Pitman said that was exactly the way she saw it. She gave an example from an experience she had in Akron, Ohio where she had been describing that they wanted fair and equal treatment. She said through written requests, she had requested a copy of an old agreement as a matter of public record, but was never granted a copy of the agreement. She said she understood the fear that once MCI World Com got in, people thought the price would go up. She summarized that just the opposite had happened and because of competition, lower prices and better services were provided for everyone.

Coun. Soth said it was similar to claims and counter claims that were made by some of the electric utilities in their deregulation process.

Coun. Stanton commented that Ma Bell had not been as entrenched west of the Rocky Mountains as back east. She asked who regulated and disbursed the USF.

Andrulis said that it was regulated by FCC and was part of the Telecom Act of 1996. He explained that one concern was the incumbents had provided universal service to everyone, and companies like his could go in and serve only the highest paying customer. He reported that they could target the commercial customers, who were generally the highest revenue, but in order to do that they had pay into the USF. He noted that the other providers could draw from the USF to cover costs.

Coun. Stanton asked if it was a fee that was paid to the FCC or a percentage of revenue again. She noted that she was interested in knowing because they were looking at electricity deregulation.

Andrulis responded that he was not sure if it was a fee but would find out how much the company paid. He said it was required of all the competitive local carriers.

Mayor Drake asked him to return the information to the City Recorder.

Coun. Doyle asked if the providers passed franchise fees through to the customers.

Andrulis said it was fair to say that was true.

Pitman said there were four types of fees in the percentage of gross revenues. She pointed out linear foot fees, and did not see those passed

through and implied the consumer always paid. She noted access line fees, and said several cities just charged for what was done to the ROW.

Coun. Stanton asked how they would treat new providers economically neutral if the current providers weren't paying exactly what they were paying. She asked if they were coming to the table that night with an idea of what they wanted the City to do differently than what was set up in the ordinance.

Andrulis said he understood how cities were locked into agreements with the existing ILEX. He explained that their position was that they generally agreed to such agreements if they could have one that was of short enough term (maybe four years), or some language that would give them the right to renegotiate the agreement, when the City made GTE subject to the terms and conditions of the agreement. He said many cities chose not to because of the incumbent having longevity.

Coun. Stanton asked if they wanted to come in now, why would they not want to agree to a 10-year contract, so whatever happened in four years they would still be locked into the 10-year agreement. She noted that if changes were made and fees changed then they would not be impacted.

Andrulis said they had the unfortunate situation where they had not made the existing provider pay.

Coun. Stanton asked if the ordinance allowed them to charge different fees.

Scheiderich said it allowed the City to negotiate a franchise with each, so there could be some give and take on other issues.

Mayor Drake pointed out that from a practical viewpoint, one of the disadvantages of negotiating all of them at once was that it could be extremely difficult in terms of staff time. He said he thought from MCI's perspective they would like to be within at least the same time frame, as close as GTE or any other provider. He noted that it would be difficult for staff to negotiate every single franchise that the City had at the same time, but he thought what he was asking for was proximity, if not the identical time. He recommended that they be one year apart for the sake of the legal staff's commitment of time. He said he wanted the legal staff to have time to work on the agreements and complete them so the City would not be out of a franchise agreement.

Coun. Yuen wondered how many existing franchises they had.

Scheiderich said the two ILEC were US West (in relatively recent annexations by the City) and GTE for the vast majority; ATT was the long distance line and ELI was the fiber optic line.

Coun. Yuen commented that, in listening to Andrulis, he thought Andrulis was going to suggest that if the existing franchise was favorable to ILEC or the existing franchisee, then the Competitive Local Exchange Carrier (CLEC) would have the option to come in at the existing franchise rate of the ILEC. He said at that point in time the ILEC would be renegotiated up to the rate of the ordinance, and the rate of the ordinance would then apply.

Scheiderich explained that the possibility was left open in the ordinance that the City could negotiate a franchise where for the first four years the franchise fee matched GTE. He said that when GTE was up for renewal, then all would match one fee. He noted that it was not likely that between now and then the Legislature would remove the seven- percent limitation on ILEC.

Coun. Yuen said he was all for competition and one day it might allow him to get 56K out of his home modem.

Andrulis asked if he could send his comments to Scheiderich.

Scheiderich confirmed that Andrulis's comments should be sent to him.

Keith Binney, introduced himself and said he was the Section Manager for GTE Telephone Operations in Oregon. He said he did not have a lot of comments on the ordinance but did have two points he wished to discuss before Council. He noted that the comments in the letter had mentioned that within 30 days they were going to vote on the ordinance and said that some of the GTE regulatory staff would like to have a face to face chance to comment rather than just written comments. He asked if Scheiderich was the staff contact.

Scheiderich noted GTE had sent comments earlier and he was the staff contact.

Mayor Drake noted that it might not be within 30 days, and said he thought it would be in December.

Coun. Soth said it sounded like some of Binney's own people had not given him background as to what had been going on.

Binney stated that he only heard about it that afternoon and GTE was interested in the ordinance, which was why they wanted some representation at Council.

Coun. Doyle asked who had been notified.

Scheiderich reported that he had contacted many, and noted that people on their own initiative had asked to be on the list. He said he would get the master mailing list to Council and noted that there was easily a dozen

potential providers. He reported that the City had sent working drafts of the ordinance to GTE (specifically Mr. Williams in Everett, Washington).

Coun. Doyle asked if the communication had been going on for a while.

Scheiderich said it had been, and he would venture to guess that GTE had a less urgent interest than others did.

Coun. Soth commented that he was glad that the process was going forward, and agreed that it was good to get into the process and discuss it in an amicable way. He complimented Scheiderich and the other interested parties that were there that night for the openness with which the process had gone forward.

Coun. Doyle thanked them and expressed his appreciation for the explanation of terms and acronyms.

Coun. Brzezinski asked regarding timing, if something came up in the 1999 legislature, was there any precedent (in the legislature) that anything was retroactive to when it was actually passed.

Scheiderich said it was not.

Coun. Brzezinski asked if it was necessary to have the ordinance in place before the beginning of the 1999 legislative session.

Scheiderich said he thought providers such as MCI would just as soon have the certainty of a contract and not leave it up to the legislature.

ORDINANCE:

Coun. Soth MOVED, SECONDED by Coun. Doyle that the rules be suspended, and that the ordinance embodied in AB 98-288 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Doyle, Soth, Yuen, Brzezinski and Stanton voting AYE, the motion CARRIED unanimously (5:0)

First Reading:

Scheiderich read the following ordinance for the first time by title only:

98-288 An Ordinance Amending Chapter 6 of the Beaverton Code Authorizing the City Traffic Engineer and Traffic Commission to Establish Traffic Control Devices

OTHER BUSINESS:

Mayor Drake asked Council to consider a request for a tree removal permit fee waiver.

Coun. Doyle MOVED, SECONDED by Coun. Stanton that Council grant a tree removal permit fee waiver as requested in the Mayor's October 22,1998, memo regarding Ms. Farnoush Grove at 9795 SW 153rd Ave in Beaverton.

Question called on the motion. Couns. Brzezinski, Soth, Doyle, Yuen and Brzezinski voting AYE, the motion CARRIED unanimously (5:0)

Coun. Yuen thanked staff for the work on the 1st reading of the ordinance.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 8:12 p.m.

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Darleen Cogburn, City Recorder

APPROVAL:

Approved this 8th day of February, 1999

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Rob Drake, Mayor