

Agenda Report

DATE: August 18, 2003

TO: CITY COUNCIL
FROM: CITY MANAGER
SUBJECT: AMENDMENTS TO, AND ASSIGNMENT OF, THE FIBER LEASE AGREEMENT BETWEEN THE CITY AND TIME WARNER TELECOM, INC.

RECOMMENDATION

It is recommended that the City Council:

1. Approve amendments to the fiber lease agreement between the City and Time Warner Telecom, Inc., and
2. Approve assignment of the lease from Time Warner Telecom, Inc. to Time Warner Telecom of California, L.P.

BACKGROUND

In September 1999, the City Council approved the lease to GST Telecom Inc. (GST) of fiber in the City's fiber optic backbone. Although GST had plans to serve business customers in Pasadena using the City's fiber, the company's financial problems prevented it from starting service here. In May 2000, GST filed for bankruptcy. Time Warner Telecom, Inc. acquired most of GST's assets, including the fiber lease with the City, through GST's bankruptcy proceedings in January 2001. The City approved the Time Warner Telecom, Inc. acquisition on the condition that GST make its September 2000 \$1 million lease payment to the City and that Time Warner Telecom, Inc. assume all obligations of the lease agreement after the purchase date. Both of these conditions were met.

Time Warner Telecom, Inc. approached the City with a request to modify certain provisions of the lease agreement to facilitate its use of the fiber. City staff and Time Warner Telecom, Inc. representatives have discussed a variety of changes to improve the operational efficiency of the lease for both parties. Time Warner Telecom, Inc. asked that the City facilitate its deployment of voice and data services to local

businesses by making its costs and construction timeframes more predictable. The proposed changes to the fiber lease agreement include:

- A shift in responsibility, at the Water & Power Department's request given resource constraints, from the Water & Power Department to Time Warner Telecom for construction of conduit to reach customer buildings. This change will increase Time Warner Telecom's control over the cost and timeframe for conduit construction. Construction will continue to be coordinated with the Water & Power Department. Water & Power will retain responsibility for connecting new fiber runs to the fiber optic backbone.
- A shift in responsibility for routine maintenance of conduits and fiber cables connected to the City's fiber backbone from the Water & Power Department to Time Warner Telecom.
- An increase in the number of hours of notice the City will provide to Time Warner Telecom before performing routine maintenance on the fiber optic backbone.
- A return to the City of 12 strands of fiber previously leased to Time Warner Telecom (the lease will cover 108 rather than 120 strands of fiber). These recovered strands will be used primarily to meet internal needs for voice and data connections between City facilities.
- Updates to definitions in the agreement to more closely match current industry terms and concepts.

Time Warner Telecom, Inc. has also requested that the City approve an assignment of the fiber lease agreement to Time Warner Telecom of California, L.P. Time Warner Telecom's standard business approach is to hold assets within state-specific limited partnerships, with revenue flowing up to the corporate parent. Time Warner Telecom, Inc. has consented to enter into an assignment agreement with the City under which the lease agreement is transferred to Time Warner Telecom of California, L.P. with Time Warner Telecom Inc. retaining responsibility for performance of the agreement if Time Warner Telecom of California, L.P. cannot perform. The assignment meets Time Warner Telecom Inc.'s business organization requirements while protecting the City should the limited partnership fail to perform. The assignment also acknowledges that the City waives any breach claims against Time Warner Telecom, Inc. from the date the City approved Time Warner Telecom, Inc.'s acquisition of the lease until the City's approval of the lease assignment to Time Warner Telecom of California, L.P..

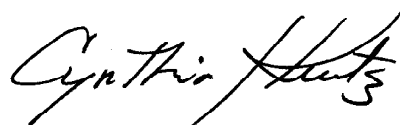
Time Warner Telecom has indicated that the recommended amendments to the lease agreement will help the company implement its plan to provide local businesses with advanced phone and data services. The company has plans to roll out service to 15 or more large local businesses in the next 12 months.

FISCAL IMPACT

The City regains access to 12 strands of fiber, without any change in the schedule of annual lease payments. With the additional strands, the City will be able to meet more of its own telecommunications needs instead of contracting with others for service. In addition, the City may generate revenue from licensing the strands not required for internal use to other local institutions and their business partners.

The amendments may also have a positive impact on local economic development. Previous research through the 2001 Telecommunications Market Assessment has shown that businesses do take the availability of telecommunications services into account in selecting a business location. Time Warner Telecom's entry into the local market for business voice and data services should complement the other factors that encourage businesses to locate or remain in Pasadena.

Respectfully submitted,



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