FILED
Court of Appeals
Division II
State of Washington
1/31/2023 9:10 AM

Court of Appeals No. 57246-0-II
Pierce County Superior Court Cause No. 19-2-07135-0

IN THE COURT OF APPEALS, DIVISON II
FOR THE STATE OF WASHINGTON

THOMAS McCARTHY *et al.*,

Appellants,

v.

CITY OF TACOMA,

Respondent.

FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

OPENING BRIEF OF APPELLANT

THOMAS MCCARTHY

Thomas McCarthy
801 S Cushman Ave,
Tacoma, WA, 98405
253-250-9290
tmccarthy253@gmail.com

TABLE OF CONTENTS

INTRODUCTION 1
ASSIGNMENTS OF ERROR 2
STATEMENT OF CASE 4

A. History of Click!'s creation and purpose for utility 4
1. Court approval of telecommunication plan 9
B. $67 million budgeted for additional capacity to implement City's broadband business plan. 13
C. Click! establishes open access municipal broadband network with wholesale rates set by Council. 16
D. $200 million funds additional capacity for telecommunications. 21
E. Click!'s state-of-the-art system serves over 22,000 ratepayers. 24
F. Tacoma Powers' Failed Gateway Meter Program. 26
G. City's "All-In-Plan" explicitly recognizes City Charter §4.6's public vote mandate. 27
H. *Coates* lawsuit derails "All In" plan, alleging violations of accountancy act. Click! Audit abandoned. 29
I. City issues Request for Information (RFI), falsifying Click! revenue and ignoring City Ethics Policy. 32
J. Privatization of Click! by illegal Surplus Declaration and transfer of ownership and control to Rainier Connect. 35
K. Historical controversy over municipal competition, demonstrates purpose behind public vote statutes 39
L. Controversy over creation of Click! and municipal competition over broadband. 46
M. Surplusing Click! with irrational "Gateway Meter" argument and false representation of Click! as CATV system per *Issaquah*. 51
N. Click!'s municipal broadband service fulfills the vision and purpose of the 1997 Business Plan. 53

ARGUMENT 60

A. Standard of Review 61

B. Click is a public utility. Res judicata is binding on issue of "public utility" from 1996 Pierce County Case further settles the issue, as well as Coates decision, making Click! "part of a utility", which requires a public vote for disposal, therefore City is estopped from claiming otherwise 61

1. Click! is a utility, because telecommunications companies are public utilities. ……...63

2. City's creation and dedication of Click! to public service, while expressly holding Click! out to supply its broadband for ratepayers use establishes Click! as a public utility service.……...……64

C. Trial court misapplied Issaquah, to erroneously conclude that Click! is "Not a Utility" but a "cable television system", which is a "luxury" and not a public utility……66

D. City's surplus declaration circumvents express requirement for a public vote on disposal of utility property and destroys the spirit of the surplus law —protecting citizens property from plunder—such avoidance is bad faith, primary ultra-virs and renders disposal contract void……..70

E. City's intentional avoidance of public vote is substantive violation of policy behind City Charter 4.6 and primary ultra vires. 75

CONCLUSION 79

TABLE OF AUTHORITIES

Arnott v. City of Spokane,
6 Wash. 442, (1893)……..……76, 82

Bremerton Municipal League v. Bremer,
15 Wn.2d 231, 237–39, 130 P.2d 367 (1942)……78, 84

Campbell & Gwinn,
146 Wash.2d at 9-10, 43 P.3d 4. …….61

City of Eugene v. Comcast
359 Or. 528, 375 P.3d 446 (2016) ……...69, 70, 74

City of Tacoma v Taxpayers and Ratepayers
Superior Court No. 96-2-09938-0 (1996)…… 12, 62, 77

Clark v. Olson,
177.Wn. 237,.31 P.2d 534. ……...65, 93

Coates v. City of Tacoma,
11 Wn. App.2d 688, 457 P.3d 1160 (2019)……...29, 30, 47, 32, 50, 62.

Community Telecable V. City Of Seattle
164 Wn.2d……..…… 70

Dept. of Ecology v. Campbell,
146 Wn. 2d 1, 11 (Wash. 2002) …….……75

Eugster v. Washington State Bar Association,
198 Wn. App. 758, 786, 397 P.3d 131 (2017)…… 62

Inland Empire Rural Elect. v. Dept. of Pub. Serv.,
199 Wash. 527, 92 P.2d 258 (1939). …….…64

Issaquah v. Teleprompter Corp.,
93 Wn.2d 567(1980) …..……4, 5, 51, 55, 58, 67, 68, 77, 78

Jametsky v. Olsen,
179 Wn.2d 756, 317 P.3d 1003 (2014). …….…….60, 75

Kadoranian v. Bellingham Police Dept.,
119Wn.2d 178, 189,(1992) ……60

Qwest Corp. v. City of Bellevue,
161 Wash.2d 353, 358, 166 P.3d 667 (2007). ……...60, 73

South Tacoma Way, LLC v. State,
169 Wn.2d 118, 233 P.3d 871 (2010). ……..77

State V. Jenks,
487 P.3d 482 (2021) …….....70, 83, 84

<u>Tacoma City Charter and Municipal Code</u>

City Charter §4.2 Powers to Fund and Create Public Utilities….61

City Charter §4.3 Fix rates for supplying utility services ……...18

City Charter §4.6 Disposal of Utility Properties. 2, 3, 4, 27, 28, 40, 42, 44, 62, 66, 75, 76, 79.

<u>Statutes and Regulations</u>

RCW 7.24.010 ……..61

RCW 19.385.020 ……..25

RCW 35.92…….4

RCW 35.94……3, 40, 71, 78

RCW 35.94.02…….3, 4, 6, 39, 66, 67, 74, 76.

RCW 35.94.040…….2, 70, 72, 73

RCW 35.99.010(1) ……..……...69

RCW 35.99.010(7) ……..……...69

RCW 35A.80…….4

RCW 35A.l1.020 …….10

RCW 43.330.532(1)……..57

RCW 43.330.539……..58

RCW 54.04.020……45

RCW 54.16.180(2)(B)……..72, 73, 74

RCW 54.16.330……..17, 45

RCW 8.12.030 ……5

RCW 80.01.040 ……63

RCW 80.01.040(28)……..63

RCW 80.04.010(13)……..……..5

RCW 80.04.010 (28)……5, 63, 66

RCW80.36.630(1) …… ……9

RRS §§9512-14……...40, 71, 72

Tacoma City and Utility Board Ordinances and Resolutions

Tacoma Council Ordinance No. 25930 (1996)……..…9, 10, 11

Tacoma Council Ordinance No. 26141 (1997)…….……..…15

Tacoma Council Resolution No. 33668 (1997)……..…15, 22, 64

Utility Board Resolution U-9198 (1996)……10

Utility Board Resolution U-9258 (1997)……...13, 14, 22, 64

Utility Board Resolution U-9311 (1997)……15

Utility Board Resolution U-10828 (2015)……27, 62, 76

Other Authorities

Wash. AGO 2003 NO. 11……..64

Tacoma City Code TMC-16B.01.030(W),.....69

In re Inquiry Concerning High-Speed Access to the Internet,
17 FCC Rcd 4798 at 4821…… ……..69

APPENDIX

A. 1973 Director Benedetti letter requesting surplus authority same as PUDs. ……...…… ..89

A-1 1973 Tacoma City Attorney Paul Nolan testimony requesting surplus authority same as PUDs. ……..…….92

A-2. 1973 Senate insure Bidding for surplus items. …….....94

B. TPU promoting Click! as "one of the largest municipally owned telecommunications systems in the country. …… …96

B-1. TPU Website describing "Our Services."…...…...……98

B-2 . TPU's Mission Statement: "Tacoma Public Utilities provides "Services that are Vital to Our Quality of Life". …100

B-3 Photo of Click! Customer Service counter in main lobby at TPU headquarters. ……...…….102

B-4 Click! defines competitive Open Access Network. 103

C. Professor Baarsma & Singleton scholarly paper: Creating Capacity And Competition In Broadband Telecommunications: The City Of Tacoma's Initiative",……...……...112

D City's own Resolution U-10828 ALL IN Plan -Recognizes Charter 4.6 mandate for public vote in disposing Click!. …..118

E Tacoma's "Telecommunications Study" for Broadband system -Why Should a Public Owned Electric Utility be Involved in Telecommunications? ……..119

F City of Tacoma Ordnance #25930 Establishing Click! as a Utility System. …….……..130

F-1 Resolutions #33668 and U-9258 -proclaiming Broadband utility system will serve a public purpose. …… ……137

G *City of Tacoma v Taxpayers* and Ratepayers of the City Complaint to establish municipal utility system. ……... 144

G-1 1997 Order on Declaratory Judgment authorizing funding for telecommunications utility system. 150

H Sample Monthly Income Statements for Click! September and October of 2019 showing profitable operations. …….153

H-1 Click! 2018 Annual Report -Showing state-of-the-art FTTH technology deployment. ……156

H-2 Click!'s organizational chart showing the System's 92 budgeted employees and job titles. …….158

H-3 Click!'s FCC Form 471 Reporting utility services 160

H-4 Click! Networks' Transparency Disclosure. ……163

H-5 2016 Tacoma Power Superintendent's Report. …… 173

I RFI Joann Hovis' Contract for producing RFI. ……..176

I-1 City of Tacoma Purchasing Policy Manual Definition Of RFP. …….…….182

I-2 Tacoma Purchasing Policy Manual -Competitive Solicitation Policy and Ethics Of Procurement Policy …… 185

J Joe Tellez – Tacoma Public Utilities Chief Technology Officer Letter explaining Termination of the Tacoma Powers Gateway Metering **Pilot** Program ……..……189

INTRODUCTION

This case seeks to prevent the unlawful privatization of Click! Network (Click! or System), the City of Tacoma's (City) municipal telecommunication utility system.

Owned and operated by Tacoma Public Utilities (TPU), dedicated to public use for 20 years, Click! provides essential telecommunication services, vital to the lives of TPU ratepayers.

With an illegal declaration of "**surplus,**" City Council (Council) circumvented explicit statutory language requiring voter approval upon City's contract to privatize Click!'s useful municipal-utility property**.**

With no appraisal or bidding, Click!'s entire citizen owned utility enterprise, along with 20,000 active end-user accounts, was separated —as "surplus."

City's disposal of Click! destroys the policy for such statutes —which is to prevent corrupt disposal of citizen owned utility property**.**

This Court should find City's contract ultra vires and void.

I. ASSIGNMENTS OF ERROR

A. Trial court erroneously found Click! is not a public utility.

B. City erroneously applied state and city law by declaring Click! Network surplus.

C. City erroneously failed to apply law requiring voter approval of contract for sale, lease and transfer of Click!;

D. City's disposal of Click! without prior voter approval violates policy requiring voter approval to sell Click!.

E. The trial court erred in granting summary judgement for defendants and denying summary judgement for plaintiff.

The issues related to each assignment of errors are as follows:

A.1 Did trial court err finding Click! is not a public utility, **when** Click! is a telecommunications company providing telecommunication services dedicated to public use?(Yes)

B.1 Does City's surplus declaration violate RCW 35.94.040, **when** Click! actively provides utility service to 20,000 ratepayers and continues providing the same service to the same ratepayers post-privatization?(Yes)

B.2 Does City's surplus declaration violate City Charter 4.6, **when** Click! is required to continue providing utility services and City Charter has no surplus authority**?**(Yes)

B.3 Is City's surplus declaration in bad faith, irrational, arbitrary or capricious, **when** City's Resolution

acknowledges the public-vote mandatory then circumvents the law**?**(Yes)

C.1 Does City's disposal of Click! without voter approval, violate Charter 4.6 and/or RCW 35.94.02, **when** prior electoral approval is required**?**(Yes)

D.1 Does City's disposal of Click! by surplus contravene **policy** behind the RCW 35.94 **when** policy is preventing corrupt disposal of utility assets**?**(Yes)

D.2 Is City's disposal of Click! a primary ultra vires act, **when** City knowingly avoids statute's disposal **policy?**(Yes)

D.3 Is City's disposal of Click! without appraisal, sealed bids, or requests for proposals (RFPs), arbitrary, capricious or in bad faith, **when** City policy requires competitive solicitation, and none occurs?(Yes)

E.1 Did trial court erroneously grant summary judgement for defendants, and deny summary judgement plaintiffs, where City failed to obtain voter approval for separation of utility system property devoted to public use, when such property is essential for continuing to provide public utility services?(Absolutely!)

/

/

/

/

STATEMENT OF THE CASE

A. History of Click!'s creation and purpose for utility.

Trial court erroneously found Click! was a "cable television" system, providing "cable television services," and not a "public utility" under precedent in *Issaquah v. Teleprompter Corp*., 93 Wn.2d 567, 574-76,(1980). See *infra* pg. 66-69.

Issaquah had found: "This determination is supported by Teleprompter's own frequent assertions at trial that cable television **is not a utility**. Counsel stated, for example":

> [C]able is definitely not a utility, even in Issaquah. It's basically a luxury service. It's television improvement. It's something you can do with a rooftop antenna. In that sense, it's not a utility.

Issaquah added, "Since we find that cable television **is not a public utility** as contemplated by RCW 35A.80 and 35.92, it follows those provisions do not address municipal ownership**"**

Trail court, bound by Issaquah, ruled:: RP pg.54, ln 21.

> I'm going to find that . . .the **<u>Click! system is not a public utility</u>** within the definition of 35.94.020 or within section 4.6 of the City Charter

Trial court mistakenly applies *Issaquah*, finding Click! is "not a public utility." destroyed citizens-owners' express statutory right to vote upon disposal of their municipal utility system —or any part essential to continue service.

Click! is not a cable television system. Click! is a "Telecommunications Company" devoted to public use and dedicated to a public purpose. Click! is a public utility. RCW 80.04.010(28) provides:

> "Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every **city or town owning**, operating or managing **any facilities** used to provide **telecommunications** for hire, sale, or resale to the general public within this state.

Click!'s "facilities" were installed under City's power of eminent domain, with the right to "condemn land and other property for any "public use". *See* RCW 8.12.030

RCW 80.04.010(13): defines Click!'s facilities:

> "**Facilities**" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

Click!'s dedication to the public purpose of providing ratepayers with wholesale broadband services, makes Click! a "Public Utility.".

The Court might take judicial notice of events surrounding the creation of Click!, to learn the "purpose" for statutes providing a protective public-vote.

In the mid-1990s, Tacoma Power was facing implementation of "open access transmission" requirements for electricity mandated by the Energy Policy Act of 1992.

Tacoma Power (Power) management determined a system wide fiber-optic telecommunication system, connecting 65 substations to an Energy Control Center, to monitor the electric

system and automate management of energy loads, would be beneficial. CP 928. CP 1380. [1]

Research showing Tacoma was underserved with broadband, prompting Tacoma Power to consider "additional capacity" for commercial data transport and broadband Internet. CP 928, 1380-82, 2623-24. [2]

A detailed "**Telecommunications Study**" and "**Business Plan**" was commissioned, helping policy makers decide if they should build and operate Click! as a public utility. CP 309-462. CP 1772-73

A "Telecommunications Study Team", of approximately twenty people, including Light Division staff, and a range of outside experts in finance, business planning, marketing, telecommunications and the law, prepared the Study and Plan. CP 462.

---

[1] Power is a division of the City's Department of Public Utilities, which consists of Power, Tacoma Water and Tacoma Rail.. CP 1064.

[2] RCW 43.330.530 defines broadband service and infrastructure.

The Study asked, "**Why should a Public Owned Electric Utility be Involved in Telecommunications**?" CP 310.

The Telecommunications Study concluded:

> In reviewing the local situation it is clear that the local market has a growing need for better telecommunications access. Despite growing local demand, the incumbent wire line service providers have stated that their investments in the local infrastructure will either slow without significant rate increases or be halted all together. **One could hope** that other companies would step forward and create a modern telecommunications system throughout our community but the prospects for that occurring appear dim. (emphasis added). CP-453.

The Study viewed telecommunications as the "Railroad of the 21st Century," and a broadband system as "key to creating economic growth." The Study stated: CP 345.

> There was a time when the simple act of drawing a line on a map could either create a community or force a town into obsolescence. Those were the days of railroad planning. To have access to the rail line meant a chance at prosperity as a "railroad town." Without access, a town would have an uphill battle to be involved in the growing network of trade.

Also:

> As we draw near the close of the 20th century, many signs indicate that the new railroad towns

> are "Tele-Communities", communities with a strong communications infrastructure supported by both information technology and telecommunications systems. CP 345.

The Study concluded (CP 351 emphasis added):

> In responding to the railroad and other technology shifts, communities have always had the opportunity to be part of the revolution, or be dragged into the evolution that will naturally follow. The difference may be a choice of mastering one's own destiny or waiting for the train to arrive.

1. Court approves commercial telecommunication plan.

In 1996, City's authority for providing commercial telecommunications services was unclear, so Council passed Ordinance #25930 and sought declaratory judgement.

TPU Director Mark Crisson explained **Ordinance #25930** was needed to **"**clarify the legal authority for certain aspects of the project**"**. CP 493. Those "certain aspects" were commercial telecommunication services, or "broadband," as a utility service. RCW80.36.630(1)

> (c) "Broadband service" means any service providing advanced telecommunications capability, including internet access and access to high quality voice, data, graphics, or video.

In June 1996, TPU's Board (Board) approved Resolution U-9198, for "electric system revenue bonds" for the system.

Director Crisson explained the Bond Ordinance provide:

> Authorization to Proceed With a Declaratory Judgment Legal Action to Confirm Authority to Construct and Operate a Fiber Optics System With . . . Telecommunications Capabilities.

The Resolution provided:

> WHEREAS by the installation of <u>additional telecommunications capacity</u>, this system would have the capability of providing <u>additional</u> public benefits for the City, and Light Division ratepayers,

In July 1996, Council approved **Ordnance #25930**, citing RCW 35A.11.020 as authorizing City to "operate and supply **utility services**". CP 468.

The ordinance provided the "TELECOMMUNICATIONS PROJECT" would be a "**Separate System**," and "**public interest**" required the system. (CP 472 emphasis added).

ORDINANCE NO. 25930

> AN ORDINANCE of the City of Tacoma, Washington establishing a **telecommunications system** as part of the Light Division, . . sale of the City's Electric System **Revenue Bonds** . . construction and installation of additions and improvements to the **telecommunications system**.
>
> ARTICLE II
> FINDINGS; ESTABLISHMENT OF THE TELECOMMUNICATIONS **PROJECT** AS A **SEPARATE SYSTEM**; AND ADOPTION OF PLAN AND SYSTEM
>
> Section 2.1. Establishment of Telecommunication System. The City hereby creates a separate system of the City's Light Division to be known as the telecommunications system (the "Telecommunications System"). **The public interest,** welfare, convenience and necessity require the **creation** of the Telecommunications **System**, . . for the purposes set forth in Exhibit A.

Exhibit A provided the "Telecommunications Project" would provide customers with "Internet Access". CP 491

The Ordinance provided an estimated cost of $40,000,000 for the plan's "additional capacity". CP 472, 2614.

City initiated declaratory judgment action, *City of Tacoma v Taxpayers and Ratepayers of the City* Pierce County Superior Court No. 96-2-09938-0 (1996): CP 1681-86.

Citing "**public interest**" and ability to server "customers' homes", City argues: CP 511.

> Tacoma may conveniently render **telecommunications services** because the Light Division has an existing citywide electric system of connections to **customers' homes**, . . The City's provision of **telecommunications service**s will make the market more competitive, thus furthering the **public interest** recognized by the Legislature.

2. Court approves Click! as a public utility service devoted to "public interest".

City's May 1997 memorandum explained the "Telecommunications System" (The System) would be a public utility, dedicated to public use, owned and operated by the Tacoma Power —not a general government obligation. CP 1761-64:

> The sole question on this motion for summary judgment is whether the City has authority to issue bonds to finance an activity that is indisputably within

> its municipal powers: construction and operation of the Telecommunications System. CP 1737.

City argued the project would be funded by TPU with "*funds available from the Electric System (which includes the Telecommunications Project)*." CP 1767-68.

> The City's obligation under a revenue bond is limited to funds available from the Electric System (which includes the Telecommunications Project). . . Thus, no general fund dollars are committed, and no general obligation is incurred under the Bond.

Summary judgment, granted May 9th, 1997, authorized construction of Click! and implementation of the business plan for wholesale broadband and data-transport service as a public utility service dedicated and devoted to public use. CP 1776.

B. $67 million budgeted for additional capacity to implement City's broadband business plan.

In March 1997, Director Crisson estimated $65 Million in "startup" costs. About Resolution U-9258, he wrote Council describing Power's "Telecommunication Study" and community outreach: CP 2361-64.

> In preparation for this request, the Light Division has undertaken an extensive telecommunications study that includes market research, telecommunications industry analysis, an examination . . similar activities in other municipalities. Staff has made presentations to neighborhood councils, chambers of commerce, local economic development groups, the Tacoma Port Commission, and the Tacoma Public School Board. Two joint Public Utility Board/City Council study sessions were held.

He explained the System would provide broadband services.

> The Light Division requests approval by the Public Utility Board and the City Council to develop a broad band telecommunications network as described in the Light Division Telecommunication Study.

Devoted to public use, the "**state-of-the-art**" system would serve all "the community":

> Significantly enhances regional economic development and quality of life by creating **state-of-the-art** telecommunications infrastructure and providing it to all businesses and residences **throughout the community**.

Board authorized Resolution U-9258, 293-98; 2356-58.

In April, Council funded the "Business Plan," with Resolution #33668 —stating the project would "serve a public purpose". CP 2353 (emphasis added).

> Council hereby finds and determines that the City Light Division's broad band telecommunications proposal is in the best interests of the City, will serve a public purpose and that the said Business Plan is sufficient and adequate, therefore, the Council hereby approves the Light Division's proposal including the **Business Plan** and the Department of Public Utilities, Light Division is hereby authorized to proceed to implement said proposal for a broad band telecommunications system,

In September 1997, with construction bids in hand, Board and Council approved Resolution U-9311 and Ordinance #26141, providing $67 million for "additional capacity" to fulfill the "Business Plan's" vision of providing "the community" with municipal broadband service —as "one TPU's utility services". CP 1659-73.

C. Click! establishes competitive open access broadband network with wholesale rates set by Council.

Branded as "Click! Network", a "separate" commercial enterprise was created. CP 1379, 2003–07.

Dedicated for the express "**public purpose**" of providing wholesale broadband services to improve the lives of TPU's ratepayers and facilitate **economic growth** —which increases revenue for TPU's other utilities, water and power. CP 2361-64.[3]

Click! brought faster internet speeds, lower rates and economic development. The City proudly promoted Tacoma as *"*America's #1 Wired City*"*. CP 1397.

TPU's website touted Click! as one of "*Our Services",* along with Power, Water and Rail. CP 231.

The website also states, "Click! is an operating section of Tacoma Power and a multi-service broadband telecommunications provider within the electric company's service area". CP 231

[3] Economic growth itself is a "nexus" to TPU's purpose, Click! thus serves a "utility purpose" and deserves the protective public-vote.

Click! chose an “Open Access” model, where Click! serves as impartial network owner/operator, creating a level playing field for competition between ISP resellers. CP 1068.

TPU’s website defines “Open Access”: CP 235.

> Click! operates an Open Access Network, which is a different business model than traditional telecommunications providers. In an open-access network there is a network owner and operator. and multiple retail service providers that deliver services over the network.

RCW 54.16.330(i) defines "Open Access Network":

> a network that, during the useful life of the infrastructure, ensures service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employs accountable interconnection arrangements published and available publicly.

Click! creates wholesale Internet service levels called “Speed Packages” (Packages), allowing subscribers to access the Internet at various speeds.

Competitive ISP resellers market Click!'s "packages" under terms of Click!'s "ISP Advantage Agreement". CP 2608, 235, 273.

City Charter 4.3 provides Council authority to revise "rates and charges as it may deem advisable for supplying such utility services". Click!'s broadband packages are approved by Council and listed under Title 12, the "Utilities" section of the Tacoma Municipal Code. CP 280.

Wholesale rates and packages are provided to ISPs resellers "at rates, terms, and conditions that are not discriminatory or preferential between providers".

Click! owns the system's IP addresses, provides data-transport and internet bandwidth, maintains DNS (Domain Name Services) and DHCP (Dynamic Host Control Protocol) servers, Cable Modem Termination Systems (CMTS), Cache Servers, and Core Routers, which, combine to provide subscribers with broadband Internet access. CP 273

Click! began operations in 1998. In April 2000, Tacoma's Mayor, Professor **Baarsma**, and Dr. **Singleton**, of University of Puget Sound, authored a learned paper explaining how Click! created "additional capacity" allowing competition over broadband service.

This scholarly study, "Creating Capacity And Competition In Broadband Telecommunications: The City Of Tacoma's Initiative", explained: CP1379-84, (emphasis added)

> The City of Tacoma has designed and built a broadband telecommunications system with the **express purpose of providing** competitive telecommunications services to **businesses and residents within the City**.
>
> But before making the multi-million-dollar investment, the utility's director requested that Tacoma Power's citizen oversight body, the Utility Board, authorize an outside review by a consultant group--the Stanford Research Institute. The Board approved and soon SRI's consultants came back with an interesting idea: Why not ***invest more dollars*** to expand the fiber optic pipe?

Professors' Capacity And Competition study continued:

> The political dynamics around Power's plans to build a fiber optic system soon changed once the management team broadened their strategy to **include** an array **of telecommunications services**.
>
> The manager of the incumbent cable provider (TCI) sent a scathing critique of the Utilities' business plan to the Tacoma City Manager.. .
>
> After numerous public hearings, two declaratory judgements from the state superior court, a plea from the cable provider's national president and an additional due diligence review by three outside consultants, the city policy makers moved forward with **the $100 million overbuild**.

Also in 2000, Price Waterhouse Coopers prepared a " Click! Network Financial Performance Review" confirming Click!'s success and echoing Professor Baarsma and Dr. Singleton's Creating Capacity study, stating: CP 1397.

> Click! continues to be at the forefront among public and private utility telecommunications efforts. This position has brought considerable national recognition to Tacoma, and also significant tangible benefits. From a review of local press clippings, at least 400 new jobs five building

> renovation projects, enhanced University of Washington and UPS academic programs, and several development projects are all linked to the development and presence of Click!.

The Review concluded, **"**in total, you have provided the substance to the reality of Tacoma, America's #1 Wired City.**"**

> Overall, the Click! Network has been deployed to date within the approved budget with service levels and quality equaling, and in some cases exceeding, the original plans.

D. $200 million in telecommunications funding for additional capacity.

TPU promotes Click! as **"one of the largest municipally owned telecommunications systems in the country."** CP 237.

Click!'s organizational chart shows 92 budgeted employees operating **the system**, as an integral **"part of"** TPU. CP-647.

Click!'s customer-service center shares TPU's main lobby with Tacoma Power and Tacoma Water. CP 889.

Click!'s essential services align with TPU's long stated Mission: **"**Tacoma Public Utilities (TPU) provides services that are vital to our quality of life**"**. CP 229, 989-90.

Providing broadband as a utility service, to residential and business ratepayers, does "serve a public purpose" —as Resolutions #33668 and U-9258 determined. CP 289, 499. (emphasis added).

> "The broadband telecommunications proposal is in the best interests of the City, will *serve a public purpose* and . . proposed broadband telecommunications system shall be owned, operated and controlled by the City of Tacoma Department of Public Utilities Light Division."

The municipally owned system was constructed over 20 years**,** with over $200 million in funding. In 2014, there was $80 million in book value remaining for the systems' fiber-coax. CP 215. CP 1508,

Click! passes 130,000 ratepayer homes and businesses. CP 277. The "state-of-the-art" system includes 1,500 miles of arial and underground fiber/coaxial cable. CP 981.

In Tacoma alone, Click! passes 84,000 homes with 912 miles of cable plant —29% of which is underground. CP 275.

City prepares a monthly Operational Summary, **separately** tracking Click!'s "Telecommunications Revenue", and "Telecommunications Expense"." CP-1536.

Click!'s results appear on TPU's consolidated financial statement under "Telecommunications" CP 282; 285.

Click!'s delivers cutting-edge FTTH (Fiber To The Home) and Gigabit cable-modem broadband service. CP 275, 1636-37.

Click! commercial, 10 Gbps carrier-grade ethernet data-transport service, is certified by the Metro Ethernet Forum (MEF). CP 564.

Over $13 million in capital improvements were allocated to Click! in the 2017-18 biennium. CP 1515.

Click! obtains "Telecommunications Franchises," from surrounding cities, Fife, University Place, Lakewood, Fircrest, Puyallup and Pierce County. CP. 1164 1853

E. State-of-the-art FTTH system serving 22,000 ratepayers.

By 2019 Click! served 22,000 retail, commercial and government subscribers, including Tacoma's Libraries. CP 551 *also see* CP 1136 to 1144.

Click!'s "Operations Update" newsletter informs the Court on capital spending. CP 1509-13, 1516-1529

Click!'s October 2017 "Update" shows the substantial investments made in expanding the system. For example, wiring "The Grand" Apartments: CP 1517.

> The Grand at 252 Broadway in downtown Tacoma is finally finished and has been released for activations. This complex is one of the largest high-rise buildings we have wired; taking eight months to complete. We used 41,000 feet of coax and 41,000 feet of CAT5-E to run 296 strikes into each unit along with running 1,064 outlets specific to the interior of the units.

FTTH is symmetrical gigabit service. CP 1437: CP 1518:

> Our **FTTH platform** for the Knolls is finalized and is ready for customers! All equipment is in place and verified to be functioning as planned.

Click!'s February 2019 Update describes FTTH installation at Napoleon and Orchard Street Apartments. CP 1510-11.

Click!'s 2018 Annual Report describes FTTH as state-of-the-art technology: CP 275, 1636-37.

> In 2018, Click! deployed fiber-to-the-premises (FTTP) technology for new plant extension as it is the **state-of-the-art** technology for modern network architecture and enables reliable and cost-efficient delivery of Gigabit internet services. FTTP is currently deployed in The Knolls, a 165-lot subdivision located in University Place. Two multiple dwelling units in Tacoma are currently under construction and being wired for FTTP exclusively. It is anticipated these complexes will be occupant-ready in the 1st quarter of 2019.

As registered public utility, FCC Registration # 0007466642, Click! files FCC's Annual Forms 499 and 477. CP543-50.

In compliance with FCC Rule 47 CFR § 8.1, and RCW 19.385.020(1). Click! publishes a "Transparency Disclosure" Click! is a telecommunications system, not a CATV system.

> Any person providing broadband internet access service in Washington state shall publicly disclose accurate information regarding the network management practices, performance

> characteristics, and commercial terms of its broadband internet access services . .

Click! provides City Libraries with gigabit-ethernet data-transport service. CP 1136-51, and participates in the USAC "E-rate Program" filing FCC Form 471, CP 551-55

Click! enters into "Master Service Agreements" ("MSA"). CenturyTel's agreement describes Click!'s communication services. CP 1114-31.

The "Click!'s "Telecommunications Installation and Services Agreement", covers apartment buildings. CP 569-72

> Owner grants Click! the right to enter and access the Premises for the purpose of installing <u>telecommunications</u> <u>facilities</u> in, at and upon the Premises including, but not limited to, all wiring, cables, conduits, electronic and other equipment, antennae, switches, amplifiers, filters, traps, signal receiving/scrambling/decoding equipment, key lock box(es) and key(s), and any additional equipment that may be requested for provision of . . <u>telecommunication services</u> at the Premises ("Facilities" and collectively "<u>Telecommunication System</u>")

F. Tacoma Power's Failed Gateway Meter Program.

In 2004, 8 years after Click! was launched, Tacoma Power launched a pilot "smart-meter", or "Gateway Meter" project, that attempted using Click!'s cable-modem technology for electrical meter reading. Tacoma Power's attempt failed.

A Joe Tellez, TPU's CTO, describes the failed Gateway Meter experiment: CP 2177

> manufactured beginning in 2003 and ending in 2007. From the beginning of deployment, the meters suffered from a number of technical problems within the meter resulting in communications failures.

TPU's meter program was unrelated to Click!'s "public purpose" —of providing broadband services to the community. CP 1379-84, 1394-1412 Click!.

G. City's "All-In-Plan" explicitly identifies and confirms City Charter §4.6's public-vote requirement.

In December 2015, Resolution U-10828 explicitly demonstrated City's clear understanding of Charter 4.6's mandate for a public-vote: stating: CP 896,

Dubbed the "All-In-Plan," Board authorized preparation of a "Business Plan" modifying Click!'s Open Access wholesale model, allowing Click! to provide retail broadband directly to subscribers —eliminating the ISPs. CP 896[4]. The Resolution provided for potential buyout of the ISPs. CP 899 ln 18.

By City's own proclamation, City explicitly acknowledged: the Charter 4.6's mandatory public-vote requirement (emphasis added).

> WHEREAS the City Charter Section 4.6 requires a vote of the people before the City may sell, lease, or dispose of any utility system, or parts thereof essential to continued effective utility service, and[5]

In September 2016, Board approved the "All-In" Business Plan, confirming "the telecommunications system" provides economic growth benefiting Tacoma Power.

Whereas: CP 904-16.

Communities across the nation have benefited

[4] City Council's Resolution #39347 approved. CP 51-53

[5] In 2019 Pierce County Council sees broadband as "essential" utility. CP 1035

> economically from competitive access to internet services in their communities. Tacoma Power's continued operation and maintenance of the telecommunications system for **internet access** purposes assists in making the internet services competitive in Tacoma Power's service area, which increases economic growth that **leads to greater retail power sales**,

"All In" or "Retail Compete" are terms applied when final approval was granted, September 2016 by Resolution U-10879. CP 904-916.

H. *Coates* lawsuit derails "All In" plan, alleging violation of accountancy act. Click! Audit abandoned.

In November 2016 Council called for an **independent audit** of Click!, with Resolution #39577, to determine a **"**methodology for cost allocation between Tacoma Power and Click! Network.**"** CP 1042.

Coates v. City of Tacoma, 11 Wn. App.2d 688, 457 P.3d 1160 (2019) filed in June 2017, sought to prevent Click!'s "All-In Plan" expansion, claiming Click!'s "losses" violated the accountancy act —while seeing privatization of Click! as a

solution. CP 1792-1811. City's MSJ in *Coates*-concedes Click!'s public-utility role.

Also in 2017, Rainier Connect's principals provided large campaign contributions supporting Tacoma's Mayor Woodards' 2017 campaign. Mayor Woodards subsequently voted for Click!'s surplus and transfer to Rainier Connect [hereinafter Rainier]. CP 974-79.

Council's abandoned Click!'s audit, previously approved under Resolution #39577 —fearing the audit might embolden the ***Coates*** lawsuit.

In a March 2019 Council meeting, City Attorney Bill Fosbre explained to Council Member Blocker why Click!'s audit was abandoned. CP 1047-49 (transcript), CP 208, ln 3-(Video).[6]

> **Councilman Blocker**: "My question is for our city attorney. We've mentioned that we are currently in litigation with individuals or groups that feel as though the City of Tacoma, our utilities is subsidizing the rates for Click! Can you explain to the public where we are at with

[6] Slight errors in the transcript, corrected by reviewing the video.

that litigation and how it may impact the City of Tacoma and the general fund budget?"

City Attorney Fosbre: "The lawsuit was filed in 2018. The plaintiffs, who are rate payers, including industrial customers of Tacoma Power, are alleging that, based on their analysis of sub-fund accounts, that the City Power department has been subsidizing the Click! loss to the tune of $21 million. Under Washington State Law they're entitled to interest on those amounts, which could be as high as 12% per annum, so at this point they'd be asking for $28 million dollars. Our current general fund reserve account is $35 million. If we were hit with a judgment, if we lose the appeal, they'd be asking for that money immediately.

We'd have to raise property taxes or essentially drain the general fund or layoff general fund staff, police, fire, legal department, finance."

Councilman Blocker: "If we were to do an audit at this point, what impact would it have on the judgment . . .from the courts?"

City Attorney Fosbre: "Well, we're still appealing that particular ruling. Doing an independent audit of the finances today would potentially provide more information for the plaintiffs to use against the city and against Tacoma Power related to their allegations that we're illegally subsidizing the funds. The audit could show we're not allocating enough Tacoma Power costs to the

> Click! customers and we're possibly using more power funds than we originally thought we were."
>
> **Councilman Blocker**: "It could hurt our case and put us at more risk."
>
> **City Attorney Fosbre**: "Yes, more risk on the city".

I. City issues Request for Information (RFI), falsifying Click! revenue and ignoring City Ethics Policy.

In March 2018 City issued a Request for Information (RFI) on ways to improve Click! CP 1414 -18, CP 1420.

The RFI **falsified** Click!'s revenue, stating revenue was just $2.2 million in 2017, when Click!'s actual revenue was over $25 million. CP 1422.

Joann prepared the RFI. Her Professional Services Contract contemplates an "RFP" to follow, in "Task 3": CP 1417.

> Develop a Summary Memorandum and Make Recommendations in Regard to **Next Steps** Based on the data collected through the RFI (written responses) and follow-up discussions, we will write a summary memorandum and report of our assessment of the City's potential opportunities, **how we think**

> **the market would react if the City were to issue an RFP**, and how the City's interests could be promoted and protected. The memorandum will include a full set of recommendations for next steps. . .

City's Purchasing Policy Manual (PPM) provides for an RFP:.

> **Competitive Negotiation** – The method of acquiring supplies or services in which discussion or negotiations may be conducted with responsible respondents as **part of a Request for Proposals**, resulting in contract award.

The PPM explains the purpose for competitive solicitations.

> "The purpose of competitive solicitation is to foster prudent stewardship of the public's funds and to promote open and fair treatment of participants in public contracting."

The PPM defines RFP as:

> **"Request for Proposal" (RFP)** means a solicitation method by which purchases of Supplies, Services and in limited circumstances, Public Works, are made competitive negotiation, conformity with Specifications and other written terms and conditions advertised by the City.

The PPM policy provides an RFI is done in advance of an RFP: See Appendix I.

> Request for Information (RFI) – A method used to gather information about a products or service, commonly **done in advance of an RFP**.

City never disclosed RFI would result in disposal of Click! CP 210-11. No "RFP" for Click!'s disposal was issued. There was no bidding, audit or appraisal of Click!'s assets or enterprise.

Transparency, fairness and competitive bidding are basic duties in protecting public resources. City's failure in this regard demonstrates bad-faith.

CP 981. The RFI process was further tainted by a sham participant, "Yomura". CP 207.

Advanced Stream, one of Click!'s ISPs, responded to the RFI.[7] That response provides detailed insight, useful for

[7] Rainier Connect was the other ISP. Rainier purchased a third ISP, Net Venture in 2015. CP 1675-76, 979.

informing the Court about Click!'s operation as utility. CP 1424-67

Mitchell Shook, founder and CEO of Advanced Stream, was an early plaintiff in the present case, while trying to save his company from ruin, dismissing his claim upon reaching a settlement with City compensating him for losing his ISP business due to privatization. CP 2603-11, 2642-43.

J. Privatization of Click! by illegal Surplus Declaration and transfer of ownership and control to Rainier Connect.

In October 2019, news of TPU's Surplus Resolution was spreading. On October 11, 2019, Mitchell Shook, of Advanced Stream, wrote Council explaining Click! was an essential, state-of-the-art system, certainly not surplus, and reminding Council of proper procedures for disposing of utility assets.[8] CP 1635-43.

> Good Morning Council Members,
>
> Is there any truth to a silly rumor, that City Council is considering a "Surplus" resolution, to skirt the law and sell-off Click! Network?

[8] Procedures Council was familiar with from their own "All In" resolution, as explained *supra.*

> Click! Network is not "Surplus." You cannot "privatize" it like that. It's so crazy!
>
> Please see attached, a typical "Surplus Resolution," from Duvall, WA. A good example of how Washington State law works.

In October 2019, Board declared Click!'s entire enterprise "surplus", thereby circumventing RCW 35.94.020. Resolution U-11116: CP 261

> Authorize Tacoma Power to <u>declare</u> <u>surplus</u> <u>utility-owned</u> <u>property</u> including certain inventory, equipment, and vehicles allocated to the . . . Click! Network; and authorize execution of the Click! Business Transaction Agreement by and between Tacoma Power and Mashell, Inc., d/b/a Rainier Connect and Rainier Connect North LLC.

In November 2019 Council Resolution #40467 confirmed "Surplus". CP 846-65.

Resolution No. 40468 authorized execution of the Click! Business Transaction Agreement ("CBTA") between Power and Rainier. CP 1816-53. The CBTA contains an Indefeasible Right of Use ("IRU") agreement. CP 1854-2025

At midnight on March 30, 2020, Advanced Stream's ISP agreement terminated, under terms of Mr. Shook's settlement agreement. CP 2608.

At 12:01 AM, April 1, 2020, Power transferred full ownership and operational control over Click! to Rainier —for up to 40-years. CP 1863, 2025.

All proprietary interest in ratepayer accounts —including previous customers of Advanced Stream and their active cable modems, were vested to Rainier. CP 2608, 2685.

Privatization separated Click! from public-ownership. An entire municipal broadband enterprise, specifically constructed at public expense and dedicated to public service, for the **express purpose** of providing the community an "essential" public-utility service, was alienated. CP 1826.

Privatization removed Council's rate oversight, leaving subscribers without protection from unreasonable increases.

Click!'s entire enterprise was conveyed, including subscriber pre-payments, easements, contracts, operating rights,

warranties, overhead and underground cables and conduit, electronic equipment, software, provisioning system, DNS and DHCP servers, caching servers, routers, head-end equipment, HUB infrastructure, generators, batteries, fire-suppression systems, nodes, pole attachments, related hardware installed in right-of-way, capital equipment, vehicles, inventory, spare-parts and **related facilities.** CP-1826**,** 1832, 1851,1856, 1862,1889-1904,1925, 2191.

The "surplus" assets are not worn out or obsolete. They continued providing the same functions under private ownership, as they did under public-utility ownership.

Rainier gained control of Click!'s valuable "*surplus*" brand name and IP addresses —in which the City retains **reversionary** interest under the IRU: CP 1980-81; CP 1862.

> The IP addresses assigned to Operator by Tacoma Power will continue to be proprietary to Tacoma Power. Upon termination of the IRU Agreement, Operator must return Tacoma Power-assigned IP addresses.

Electronic devices require IPv4 addresses for accessing the Internet. They are valuable, as demand has exhausted global supply. CP 1152-62

Now, Rainier sets Click!'s rates for residential, commercial and industrial customers —including Tacoma City Libraries. CP 2184.

Privatization conveyed valuable municipal-utility assets, essential to providing ratepayers effective broadband services.

K Historical controversy over municipal competition, demonstrates purpose behind statutes for public vote.

Contemporaneous events provide context for understanding the "policy" behind RCW 35.94.020. CP 1618-19.

Legislators provided a statutes for a public-vote over utility property because they witnessed the "Private Power" cartels nefarious deeds during the "Power Struggles" of the progressive era —from 1910 to 1930.

The Private Power cartel's ruthless tactics and organized efforts, to preserve monopoly profits by preventing "municipal

competition", thru influencing policymakers and swaying public opinion, are why the public-vote statutes exist.

The policy prevents the flagitious despoilment of valuable municipal utility property. Consider the all-encompassing language protecting utilities with the public-vote. CP 1617-34:

This law has never changed, originally RRS **§9512-14** and today RCW 35.94, it covers these utilities.

> It is and shall be lawful for any city or town in this state now or hereafter owning any water works, gas works, electric light and power plant, steam plant, street railway line, street railway plant**, telephone or telegraph plant and lines**, or any system embracing all or any one or more of such works or plants **or any similar or dissimilar utility or system**, to lease for any term of years or to 'sell and convey the same or any part thereof, with the equipment and appurtenances. . . (emphasis added***)***

Any kind of utility dedicated to a public purpose, in whose operation the public has an interest.

A central figure in these "public power struggles" was Tacoma's own, Honorable Homer T. Bone, author of City Charter 4.6. CP 1191-96.

Judge Bone described the Power Cartel's "**flood of corruption**" in a 1932 campaign speech, calling the power cartels' tactics "**A stench in the nostrils of decency.":** **(***Emphasis added)* CP 1183-1188.

> The power trust of this nation has junked every standard of decency in its dealing with the public. It has debauched our institutions of learning and our legislative bodies. It has brazenly gouged the pocketbooks of the people to maintain a flood of propaganda calculated to deceive the public mind. Its victims have been compelled to pay for the flood of corruption it has loosed upon the country. It has set up a long train of abuses and usurpation of power pursuing invariably the same object which is reducing the American people to a state of vassalage to the greatest instrument of plunder the world has yet produced.
>
> The people must not only destroy the power of this insolent organization, but **write into the laws of the land** new guards for future **security against such monstrous invasions** of their rights.
>
> One only need look at the record of the Washington State Legislature to perceive how completely a public body can be dominated by a power trust lobby. The thing has become a stench in the nostrils of decency in the state of Washington which led to the people of this

> great state to rise in their wrath and pass the Grange Power measure by a big majority in 1930.

Cartel activities were so notorious, an investigation was initiated by the US Senate in 1928, directing the FTC to hold public-hearings and publish a "Monthly Report On The Electric and Gas Utilities Inquiry", thus exposing the Cartel's nefarious practices CP 1211-24.

Overwhelmingly elected to Tacoma's Charter Revision Commission in 1926, Judge Bone wrote into Tacoma City's Charter "*security against such monstrous invasions".* CP 1176. Judge Bone proudly described his role as Chairman: CP 1575;.

> In 1926 a charter revision commission was elected by the people *of* Tacoma for the purpose of revising the city charter. I was elected to that commission, receiving many thousands more votes than anyone else who had been a candidate, and without objection was made chairman of the charter revision commission.

Judge Bone's 1926 Charter Commission provided City Charter 4.6's language, placing all authority for disposal of

utility assets in the electorate —leaving no doubt about legislative intent: CP 1787-88

The Power Trust's subterfuge and influence buying, to derail municipal competition, drove the policy for providing voters a protective vote in defending their utility asset —or *any part thereof*— from unscrupulous privatization.

Judge Bone's firsthand account of events in 1911-1913, is preserved in the Congressional Record, August 24, 1944. CP 1574-76.[9] Judge Bone explains:

> Tacoma built the little Nisqually plant, and it was finished by **1912**. Its transmission lines ran through the intervening countryside, which was dotted with many farms.
>
> These farmers figured they should have some of this cheap power that Tacoma was going to enjoy, so they came to the city council and said they wanted to form some farmer mutual power companies and build their own baby transmission lines to serve themselves, and asked for permission to put transformers on this high-

[9] This Congressional Record Article is also included in larger font at CP 1577-94

> tension line and to step down the current so it could be used on their farm systems.
>
> In 1911, one year before the Nisqually plant was finished, some of us went to the legislature of that year and secured the introduction of a bill which authorized cities owning their own power plants to sell surplus power outside their corporate limits. In the meantime, two or three communities of farmers south and east of Tacoma had organized cooperative mutual power companies, and they stood ready to buy power off the Tacoma heavy transmission lines. The Stone and Webster outfit, keenly aware of what this might mean, tried to block this bill in the legislature, but it passed.
>
> The next session of the legislature, in 1913, witnessed a piece of manipulation which really started the State-wide power fight. A member of the house of representatives by the name of Heinly, a Tacoma lawyer, introduced a bill dealing with irrigation, and tucked away in this bill was a provision consisting of two lines which repealed a section of law, which happened to be the law allowing cities to sell surplus power outside.
>
> I talked with many members of the legislature subsequently to the passage of this irrigation act and found that all of them thought this repealer sentence had to do with irrigation law.

Judge Bone's account informs the Court of the policy behind the Laws of 1917 and City Charter 4.6.

Judge Bone also did **"**write into the laws of the land new guards for future security against such monstrous invasions of their rights**"**. He drafted the Grange Bill, granting counties power for Public Utility Districts (PUDs), with eminent domain over Private Power's property. CP 1591.

Passed as an initiative at November's 1930 general election, the Bill became Chapter 1, Laws of 1931. Under "Notes", RCW 54.04.020, it states:

> The purpose of this act is to authorize the establishment of public utility districts .....for the benefit of the people thereof, and to supply public utility service.

Those laws, now Title 54 RCW, permit PUDs to "benefit the people" by supplying retail broadband service as a "**public utility service**".

RCW 54.16.330 finds telecommunications is:

> of **vital importance** to increasing quality of life, broadening educational opportunities, and promoting economic inclusion.

Also, RCW 54.16.330 Finds:

> [T]hat one of the most effective tools to ensure all Washingtonians have an opportunity to equitably access education, the job market, and health care resources is to allow our public utility districts and port districts to provide retail telecommunications services.

L. Controversy over creation of Click! and municipal competition over broadband.

Among the **nation's first municipal broadband systems**, CP 532, Click! was revolutionary and controversial.

Click! created "additional capacity" allowing municipal competition in the local telecommunications market —an industry dominated by monopolistic incumbents.

The idea, of TPU competing in the telecommunications market shocked the powerful telecommunications cartel —they fiercely opposed Click! creation, —waging a tireless campaign to stop it. CP 927.

The Telecom Cartel's tactics, in preventing municipal broadband competition, mirror those of the "Power Cartel" during the "Power Struggles" of the progressive era. CP 1011-21

Tacoma's incumbent monopolist, TCI, (predecessor of Comcast), lobbied vigorously to prevent Click!'s creation and preserve their monopoly. CP 1492. MSNBC news reported: CP 532.

> "TCI considered Click Network enough of a threat that Leo Hindery, president of the $7.6 billion cable powerhouse and a Tacoma native, traveled to his old hometown last October to lobby against it."

TCI's President, Tacoma native Leo Hindery, attended a Council meeting, giving Tacoma Power Superintendent, Steve Klein a "*tongue lashing*" at a Council meeting. CP 1499.

Leo Hindery's high school friend, Mike Crowley, a Council member at the time of Click!'s creation, CP 497, was, perhaps, Click!'s most fearsome opponent. CP 1492-97 2673.

Crowley later became Mayor. [10] His opposition to Click!, surfaced again 2017, as a co-plaintiff in ***Coates*** *Surpa* pg. 30. CP 207, CP 207, 1502.

---

[10] Hindery and Crowley attended Bellarmine Prep in Tacoma. CP 1492

Power Superintendent, Steve Klein, described the unwarranted political attacks on Click!'s profitability: [11] CP 1495

> My sense -- and this is my sense when I was there, and it's fairly accurate -- is the people in Click were wonderful. The service was wonderful. It was a local utility trying to do and doing good. How do you attack something like that?·
>
> And so basically the opposition came up with, well, how do you attack it?·You make people feel like they're being ripped off. And so every so many years, this theme would build up again, and here -- here it was again. (Emphasis added)

Superintendent Klein identified the opposition leaders. (CP 1492, 1495-96):

> I would say, for the most part, the ones that were the most negative were Kevin Phelps and Michael Crowley. But they were very influential, and so they were able to oftentimes get others to join them, but they were the two main individuals. And they also kept in touch with Leo Hendery and AT&T then and that sort of thing.

Another vocal opponent of Click! at the time was Brian "Skip" Haynes, CEO of Eatonville's incumbent carrier, Rainier Connect

[11] Mr. Klein described the opposition to Click! in his 2017 deposition taken as part of *Coates v Tacoma 11 Wn. App. 2d 688; 2019*:

("Rainier") —who, since April 1, 2020, has full operational control over Click!.

The News Tribune reported Haynes "*Hated the very idea of Tacoma Power's Click! Network*" CP 970-2, 2674. [12]

Diane Lachel, Government Relations Manager for Power in 2004, described the Cartel's "organized" opposition*:* CP 927.

> As you know, there has been an organized effort by private industry to discredit municipal telecommunication networks. The information about Click! Network in SBC's report ("Failed Municipal Fiber Networks") is the same old, tired, out-of-context story from previous industry sponsored reports. Here's the real story:"

Political attacks on Click! profitability continued for over 20-years. Subterfuge was exposed, with Board Member, Brian Flynt, accusing TPU Director Bill Gaines of cooking the books, making Click! appear unprofitable. Mr.

[12] Mr. Haynes even authored an Op-Ed piece for The News Tribune arguing government had no business competing with private telecom companies. CP971

Mr. Flynt stated Gaines unfairly allocated costs, disparaging Click!'s profitability —throwing in "everything with the kitchen sink" [13] CP-207 ¶ 7.

Council Member, Anders Ibsen, during a Council meeting, said Gaines' "dishonest actions" were like a cashier "stealing from the cash register".[14] CP 207 ¶8.

Council fired Gaines in 2017. CP 206 ¶ 6

City ultimately conceded Click! is not operated at a financial loss, during oral argument before this Court, in ***Coates v. City of Tacoma***, 457 P. 3d 1175, ¶86, Wash:Ct-of-Appeals, 2nd Div. 2019, 51695-1-II (Sept. 9, 2019), citing oral argument at 31-32 min. (on file with this court). *see* CP 1427.[15]

Political attacks and subterfuge are common, when monopoly profits are threatened by municipal competition. CP 1229-75. Lobbying efforts by the Telecom Cartel, to prevent

---

[13] At CP 207 ¶7: https://youtu.be/8atnBaxl1Rk at **1 minute, 10 seconds**.
[14] At CP 207 ¶8: https://youtu.be/Vi7fA_dmqcU
[15] See footnote #1, Declaration of Kari Vander Stoep, at **P.3, Line. 13**.

municipal competition are well documented. CP 940. 1290-1322. Consider:

> "The big cable companies like Comcast have a stunning amount at stake in preventing additional choices and competition in the areas they currently monopolize." CP 1285-88.

M. Surplusing Click! with irrational "Gateway Meter" argument and false representation of Click! as CATV system per *Issaquah*.

Learning of Click!'s history is essential, for City's case relies on misleading this Court about the purpose for Click!'s creation —which is providing essential municipal broadband services.

City argues Click! is a "Cable TV" system, and the only "public utility purpose" for Click! was Tacoma Power's need for a failed "Gateway Meter" program.

When TPU's "pilot project" was abandoned Click!'s facilities became "surplus" to Tacoma Power's needs.

City's Surplus Resolution, states: CP 847.

> WHEREAS, in 2004, Tacoma Power also established a **pilot project** deploying as many as

> 18,000 Gateway Meters (Tacoma Power's name for its initial smart meters) . . ., and
>
> WHEREAS, in 2019, as a result of the advances in the reliability and efficiency of interconnecting meters . . .Tacoma Power terminated the Gateway Meter Program and ended service over the HFC Network for all Gateway Meters, and

City claims "Surplus" or "Excess Capacity" is created by Tacoma Power's failed meter experiment, CP 848.

> WHEREAS the "Excess Capacity of the HFC Network" is generally comprised of: (i) coaxial cable, conduit housing only coaxial cable, conduit installed for service drops . . . conduit housing such fiber along routes . . . electronic equipment and related hardware installed in the HUB sites and in rights-of-way, all of which is . . .defined as the "Tacoma Power Commercial System", in the draft proposed Click! Business Transaction Agreement, attached hereto as Exhibit "B," created from "Surplus", or "Excess", telecommunication capacity.

The Surplus Resolution concludes: CP 854

> Section 1. That the City Council does hereby find . . . .the Click! Assets and the Excess Capacity of the HFC Network, as described therein, are surplus to the needs of Tacoma Power and Tacoma Public Utilities.

City's "meter argument" misled the court, delaying summary judgment until meters were removed. RP 36, CP 2173-86. Trial court stated:

> And the business about the meters was that there was a portion of **that system that was still being used for meters**, and my concern was we are alienating that while we were still using it. And they could conceivably do that, but if they did then that would certainly seem, to me, to **implicate the voting requirements of the City Charter** and of the Revised Code of Washington.
>
> And so I said, **the City can't win if they're still using the system for those meters**. And they said, well, we're phasing that out.

N. Click!'s municipal broadband service fulfills the vision and purpose of the 1997 Business Plan.

Ignoring the very purpose for Click!'s creation, outlined in the Business Plan., City's surplus declaration identifies a failed "Gateway Meter" programs as creating "Excess Capacity".

Click!'s neem a public utility for 25 years, CP 533, 231-39. Revenues have grown to $25 million per year. CP 870.

Click!'s $67 million construction budget, approved in 1997, specifically earmarked labor, materials and equipment to construct "**additional capacity**" dedicated to providing ratepayers broadband services.

Click!'s organizational chart shows jobs created to build and market Click!'s services. Marketing, Service Installation, Customer Service, Business Development and Community Relation Manager etc. CP 1665. -69.

Click!'s Gigabit electronics provide "**data-transport services for commercial customers**".

TPU describes Click!'s "Commercial Telecommunication Services" CP 981:

> Launched in 1998 under the brand name Click! Network, Tacoma Power provides three commercial telecommunication services to customers of Tacoma Power: retail cable television, wholesale broadband transport and wholesale high-speed Internet over cable modem.

> In addition, . . . Gigabit Ethernet technologies are used to . . carry out data transport services for commercial customers.
>
> Under wholesale Master Service Agreements, seven telecommunications carriers provide high-capacity last mile data transport circuits to their customers utilizing Click! Network's telecommunications infrastructure..
>
> Also under wholesale Master Service Agreements, two qualified locally based Internet Service Providers ("ISPs") provide high-speed Internet services via cable modems to their customers utilizing Click! Network's telecommunications infrastructure. . .

The trial court's failure to differentiate "CATV" from "Telecommunications" was a significant error, since CATV is a "luxury", and not a "utility, under *Issaquah*. *supra* pg. 4

To inform the court, Terry Dillon, Click!'s Broadband Services Manager from 1998–2004, and Network Operations Manager, from 2004-2012, provided a letter distinguishing "telecommunications" from "CATV". CP 1093-98.

Mr. Dillion's resume confirms him an expert. His roles in building Click! show what a massive undertaking it was.

From: 1998–2004 -Network Operations Manager: **CP 1096**

> Member of the Click! Network senior leadership team. Assembled organization; hired, supervised and mentored staff. Supervised and directed engineering staff responsible for Internet, broadband, video, INET and business data networks design, implementation and maintenance. Managed multiple Click! Networks; Cable modem Termination System (CMTS), Hybrid fiber Coax (HFC), Institutional (INET), Element Management System (EMS), Fiber Optic Cable, Synchronous Optical, Metro Ethernet.

From: 1998–2004 Mr. Dillon served as Broadband Services Manager. See Mr. Dillons Resume for details. **CP 1095**.

To distinguish CATV, Mr. Dillon stated: CP 1093

> That, by definition, Click! is a network that provides telecommunication products, and CATV is one of those telecommunication products.
>
> That Telecommunication is the transmission of signs, signals, messages, words, writings, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems. Telecommunication occurs when the exchange of information between communication participants includes the use of technology . . .
>
> Coax cable, fiber cable, coax/fiber redundant rings and satellite dish farms are Telecommunication network infrastructure

> mediums (physical material).
>
> Outside plant nodes, residential/business modems, set-top boxes, routers, servers, switches, sonet multiplexers, digital cross connect systems, network interface units are Telecommunications network infrastructure. . .

After retiring in 2012, Mr. Dillon served on The Click! Engagement Committee formed in 2016, by the Board to develop the "ALL-IN" Plan. CP 54, 1040

Broadband is an **essential** utility service in the modern era.

RCW 43.330.532(1) provides:

> The legislature finds that: (1) Access to broadband is **critical** to full participation in society and the modern economy."

RCW 43.330.539 Findings—Intent—2022 c 265:(1)

> (a) Access to the internet is **essential** to participating in modern day society including, but not limited to, attending school and work, accessing health care, paying for basic services, connecting with family and friends, civic participation, and economic survival.

SUMMARY OF THE ARGUMENT

The trial court found Click! was "cable television," subject to binding precedent in *Issaquah. supra pg.4*

Concealing Click! status as an essential public utility, City misled trial court into concluding Click! is "not a public utility".

Ruling under *Issaquah,* trial court avoided City's deceptive "**surplus**" resolution.

Click!'s essential, state-of-the-art, public utility system performs the exact public purpose for which it was created — only, today, a private company collects the profits.

City understands Click! is not "surplus", since City maintains a reversionary interest in Click!'s essential "facilities," the precious brand name and valuable IPv4 addresses — requiring these be returned after 40-years. *supra* pg. 34

City's "surplus" of an entire utility system circumvents statutes protecting "useful" public utility property. Privatization was arbitrary and capricious —with no competitive solicitation,

no open and transparent bidding and no Request for Proposals (RFP).

City obtained no appraisal or estimate of the enterprises' value or profitability. City's "*backroom*" privatization violates City own Competitive Solicitation and Ethics Policy, demonstrating bad faith and destroying the public-vote statutes' purpose —the prevention of unscrupulous privatization of municipal utilities.

All authority for approving disposal of utility property is reserved to the electorate.

This Court should reaffirm the long-standing rule that contracts executed by state agencies in violation of statutes are void. The contract conveying Click! is primary ultra vires and void.

Any question of Click!'s status as a utility is res judicata, conclusively decided in 1997, upon declaratory judgement, and reaffirmed under *Coates*.

ARGUMENT

A. Standard for review of summary judgment is de novo.

Summary judgments are reviewed *de novo* under CR 56. *See, Qwest Corp. v. City of Bellevue,* 161 Wash 2d.353, 358, 166 P 3d 667 (2007).

Statutory interpretation is a question of law reviewed de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014).

> "Statutes are to be construed so as to effect their underlying purpose and avoid "unlikely, absurd or strained consequences"".

Kadoranian v. Bellingham Police Dept., 119Wn.2d 178, 189, (1992).

> When interpreting statutes, "[T]he court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent."

Campbell & Gwinn, 146 Wash.2d at 9-10, 43 P.3d 4.

> A statute's plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." Id. at 11, 43 P.3d

B As a public service company, Click! is a public utility. Res judicata further settled the issue, and City is estopped from claiming otherwise.

Click!'s funding, with TPU revenue bonds, and no general government indebtedness, created a "public utility system", by Charter 4.2's simple definition:

> **Section 4.2** – The City may purchase, acquire, or construct any **public utility system,** . . . without submitting the proposition to the voters, **provided no general indebtedness is incurred** by the City.

RCW 7.24.010 provides authority for courts to declare "rights, status and other legal relations", and "such declarations shall have the force and effect of a **final judgment** or decree".

In 1997, when establishing Click!, City received an affirmative order on declaratory judgment in in *City of Tacoma v Taxpayers*. That order approved TPU funding its "public utility service". *see* CP 1731-21, 1731-32 (court orders).

The issue, was Click! a utility or general government service, was vigorously litigated. City prevailed, arguing Click! would be a "public utility". *See discussion supra-Pg.* 7-12, *also*, CP 1682-

1711. *Compare Okeson v. City of Seattle*, 78 P. 3d 1279, 150 Wash. 2d 540 (2003) City lights being general government vs. utility obligation.

City cannot have it both ways. The issue of Click!'s role as a public utility is thus settled. Res judicata prohibits relitigating issues litigated in a prior action. *Eugster v. Washington State Bar Association*, 198 Wn. App. 758, 786, 397 P.3d 131 (2017).

City confirmed Click!'s utility status, in briefing *Coates* at trial court. *See* City MSJ CP 1792-1810.

City reconfirmed Click!'s utility status, prevailing before this Court and avoiding calamity, as Court agreed: ***Coates v. City of Tacoma***, 457 P. 3d 1175, ¶32, Wash:Ct-of-Appeals.

> "Therefore, we conclude that Click! and Tacoma Power's electric utility are one undertaking for purposes of RCW 43.09.210(3)."

In passing Resolution U-10828 City confirmed its prior knowledge of Charter 4.6's "public-vote" requirement. City is

equitably estopped from claiming Click! is "not a utility". *See discussion supra*, Pg. 28-30 CP 896.

1. Click! is a utility, because telecommunications companies are public utilities.

Click! is a utility, because telecommunications companies are defined as utilities:

RCW 80.04.010 (28) provides:

> "Telecommunications company" includes every corporation, company, association, . . ., and **every city or town owning, operating or managing any facilities** used to provide telecommunications for hire, sale, or resale to the general public within this state.

RCW 80.04.010 (27) defines "Telecommunications Service".

> "Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means

Telecommunications is a "public utility".

RCW 80.01.040(28), in part:

> The utilities and transportation commission shall:
> (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, . . including but not limited to,

> electrical companies, gas companies, irrigation companies, **telecommunications companies**, and water companies.

Wash. AGO 2003 NO. 11 provides: "[T]elecommunications businesses are public utilities."

2. City's dedication of Click! to public service establishes a public utility:

Click! was established as a "public utility", to "serve a public purpose" of providing telecommunication services to ratepayers.

Resolutions #33668 and U-9258 created Click! and dedicated Click! to public use: *infra*-Pg. 19.

> The broadband telecommunications proposal is in the best interests of the City, will serve a public purpose.

Also see:

> A corporation becomes a public service corporation, . . to the extent that, its business is dedicated or devoted to a public use.

Inland Empire Rural Electrification, Inc. v. Department of Pub. Serv., 199 Wash. 527, 537, 92 P.2d 258, at 262 (1939).

Inland also provides*:*

> ‘The test to be applied is whether or not the corporation **holds itself out**, expressly or impliedly, to supply its service or product for use either by the public as a class or by that portion of it that can be served by the utility; or whether, on the contrary, it merely offers to serve only particular individuals of its own selection’,

Id, at 263, citing *Clark v. Olson*, 177 Wn. 237, 31 P.2d 534, 93 A.L.R. 240;

Click! “**holds itself out**” on TPU’s website as “**one of our services**”, *supra* pg. 12; *also*, Click!’s customer service counter is in the common lobby space at TPU’s headquarters; *also*, by promoting Click! at street fairs, on billboards, and movies in the parks. CP-2009(billboards).

Click!’s Monthly Newsletter: CP 1521

> The Mobile Movies concluded for the year with the final event on September 2nd at the UPS Log Jam event. In September . . at the Proctor Farmer’s Market

TPU a “public service company”, operating water, electrical and telecommunications companies as defined by RCW 80.04.010 (23):

> "Public service company" includes every gas company, electrical company, **telecommunications company**, wastewater company, and water company.

These are precisely what RCW 35.94.020 and Charter 4.6 are intended to protect.

> The crucial and final test is, does the use — utility — subserve a public purpose — does it furnish a natural need of the city or its citizens — does it contribute to his comfort, prosperity or happiness? If it does, it is public; otherwise, not.

Winkenwerder v. City of Yakima, 52 Wn.2d 617, 628 (1958).

C. Trial court erroneously found Click! "Not a Public Utility".

Trial court believed Tacoma Power's removal of Gateway Meters made Click! "surplus". *See supra* pg. 54*:* CP 2154.

Trial court misunderstood Click! is a utility::

> The reason why I ruled the way I ruled was that I held that the Click! network in general as a telecommunications network is not a utility. And because even though it's owned by a utility in the sense that it was operated by Tacoma Power that does not make it a utility and utilities can operate all kinds of other businesses, but they're not utility businesses.

Trial court applied *Issaquah*,: RP 48 also see CP 2154.

> Well, let me tell you what I think about all this. And that is I kept going back to this -- *Issaquah* case, you know, City of *Issaquah vs. Teleprompter*,

Finding Click! "not a public utility"**:** RP pg.54,

> I'm going to find that . . . the **<u>Click! system is not a public utility</u>** within the definition of 35.94.020 or within section 4.6 of the City Charter, and so therefore it was not subject to the agreement with Rainier Connect, was <u>not subject to a vote of the public</u> over it.

Trial court describes "subscriber interaction," saying "I can order a movie". RP-49., indicating court's belief that Click!'s System "not a utility" given *Issaquah*.

> I can order a movie on my cable television system, so it seems to me that the communications go two ways. I can talk to them, and they can talk to me by sending the movie I ordered. So I don't know that that is a distinguishing feature.

Legislature could "**do something about that**." RP-55

> Now, if they tried to do something with respect to the sources of water supply, waterworks, hydrants, sanitary sewers, and storm drains, we might have a problem. Or at least we would have a vote. **But not for the internet**. And if the **legislature** wants to do something about that, they certainly can.

Trial court conflated "telecommunications" with "cable television", concluding Click! was CATV; therefore, "not a public utility " under *Issaquah*.

Issaquah held Cable TV is "something you can do with a rooftop antenna. In that sense, it's not a utility".

The FCC differentiates Cable Service from Telecommunications, defining Cable as "one-way transmission," and allowing for "subscriber interaction".

47 U.S.C. § 522(6).

> Cable Service is one-way transmission to subscribers of video programming, and **subscriber interaction** for the selection or use of such video programming or programming service.

Compare with 47 USC § 153(53):

> The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, **regardless of the facilities used**.

Tacoma City Code TMC-16B.01.030(W), specifically excludes "Cable Service."

> "Telecommunications Service" means the transmission for hire of information in electronic or optical form, . . but **does not include Cable Service** or over-the-air broadcasts to the public-at-large from facilities licensed by the FCC or any successor thereto.

Also, compare RCW 35.99.010(**1**) with RCW 35.99.010(**7**)

Distinguishing between cable and telecommunications does not rest "on the particular types of facilities used. Rather, each rests on the function made available."

In re Inquiry Concerning High-Speed Access to the Internet, 17 FCC Rcd 4798 at 4821

> [T]elecommunications services are generally treated as telecommunications services and cable services as cable services, regardless of who provides the service or how.

City of Eugene v. Comcast 359 Or. 528, 375 P.3d 446 (2016)

Also see, Community Telecable V. City Of Seattle 164 Wn.2d 35 (Wash. 2008).

Trial court erroneous granted City's summary judgment, but should have ruled for plaintiff, since Click! is "telecommunications system" and a "public utility".

D. City's surplus declaration and avoidance of public-vote is primary ultra-virus and CBTA contract is annulled and void.

> Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.

State v. Jenks, 487 P.3d 482 (2021)

RCW 35.94.040's defines surplus as "not required for providing continued public utility service." That's clear meaning! Click!'s fully-functional system is a "going concern" —which means it "**continues**".

Without Click!'s facilities, broadband and data-transport services for ratepayers would not "**continue"**.

Click! is not "surplus", because the system continues operating, as it has for 20 years —and will **continue** doing for decades.

Click!'s turnkey enterprise was disposed of, lock, stock, barrel and brand, at midnight April 1, 2020. Once second it was a citizen-owned utility, the next second it **continued** as a private enterprise. That is not "surplus."

Click! "**continues**" providing the same service, to the same ratepayers, under the same brand, over the same facilities —only now, a private company controls rates and cashes ratepayers' checks.

Voter protection for citizen-owned utility property originated with 1917's RRS 9512-14. CP 736

RRS 9512-14 contained no surplus authority.

One such "**related statute**," which PUDs and TPU both followed until 1955, is RRS §§9512-14, preserved, intact, today at RCW 35.94.[16] CP 731, 1621

PUD's "Sale, lease, disposition of properties" authority moved from RRS §§9512-14 to RCW 54.16.180 with enactment of Title 54.

Therefore, RCW 35.94.040 and RCW 54.16.180 represent the same law, both being based on RRS §§9512-14. CP 734.

---

[16] In 1946 RRS §§9512 was "abbreviated", by a code reviser, without changing the meaning, prior to codification into RCW 80.48 in 1951.CP 1624. A savings clause, RCW 1.04.020, preserved the "meaning". RCW 80.48 moved to RCW 35.94 with 1965 enactment of Title 35.

In 1955 the PUDs received surplus authority. It would be 18 years until Tacoma received the same authority, with RCW 35.94.040. Consequently, RCW 54.16.180 is that "closely related statute" which clearly demonstrates legislative intent and "spirit" for surplus under RCW 35.94.040 —which is for things "obsolete", "worn out" or "no longer necessary".

Click!'s enterprise does not fit the spirit of the surplus law. RCW 54.16.180(2)(B)

> (1) A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties . . .(2)(a) . . which has become unserviceable, inadequate, <u>obsolete, worn out or unfit</u> to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, to any person or public body.

RCW 35.94.040 is based on RCW 54.16.180, since Tacoma City officials sponsored the 1973 legislation creating RCW 35.94.040 — and were the primary supporters.

They expressly documented the authority they sought and testified on City's need for the same surplus "privileges" PUDs

enjoy. Senator Rasmussen, 29th District, sponsored the bill, CP-764. Representative R. J. Kelley, Tacoma's 28th District introduced it in the House. CP-802.

At the March 16, 1973, House Local Government Committee meeting, Paul Nolan, Attorney for TPU, assured legislators the bill only allowed TPU **"the same privileges"** enjoyed by PUDs under RCW 54.16.180(2)(B) CP 798.

Mr. Dolan stated the of Seattle City Attorney agreed with him on the need for the bill:

> which allows the municipal utility districts the same privileges in this instance as other public and private utility districts.

TPU Director Benedetti, in March 1973, wrote the House of Representatives, stating: CP 769-70

> The flexibility sought is reasonably consistent with that long enjoyed by Public Utility Districts under **RCW 54.16.180**, and investor-owned utilities.

Director Benedetti lamented:

> Under the existing law, there is a long, detailed requirement for the calling of bids, . . . rather cumbersome for the purpose of disposing of surplus properties.

Benedetti explained:

> Sections 35.94.020 and .030 require a formalized procedure . . .. Such procedure is, of course, desirable where in fact all or an integral part of an operating utility is to be so disposed of.
>
> However, the procedure is completely impractical for example in the disposition of property and equipment, unimproved lands, substations, and other parts and segments of **facilities no longer usable**.

Benedetti promised:

> The proposed amendment would accomplish greater procedural flexibility in such transactions **without repealing the formalized procedures** in the proper situations.

Council's surplus of Click! repeals "**that formalized process**" by surplusing —"one of the largest municipally owned telecommunications systems in the country." CP 237.

> Look first at plain language in the statute, if unambiguous, use the plain language without considering other sources.

Jametsky, 179 Wn.2d at 762

> [P]lain . . . meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.

Dept. of Ecology v. Campbell, 146 Wn. 2d 1, 11(Wash. 2002)

> [B]ackground facts of which judicial notice can be taken are properly considered as part of the statute's context because presumably the legislature also was familiar with them when it passed the statute. Reference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes. *Id*, Pg. 10

E. City's intentional avoidance of public vote is substantive violation of policy behind City Charter 4.6 and primary ultra vires.

Council knowingly avoided its duty, under Charter 4.6, for providing a public-vote —a duty cited by City itself in Resolution U-10828. *See supra*, Pg. 28-30 CP 896.

City demonstrates bad faith. Disposing of Click! with no appraisal, RFP, Audit, or bidding. is arbitrary, capricious.

By misleading the trial court to believe Click!'s purpose was for Gateway Meters, when all the evidence shows Click!'s was created as a municipal telecommunications system to provide broadband services for ratepayers' benefit.

City Surplus Declaration is a bad faith attempt to circumvent the provisions of RCW.35.94.020, and completely ignores that City Charter 4.6 doesn't have any "surplus authority".

> [W]here the mode of contracting is expressly provided by law, no other mode can be adopted which will bind the corporation. This principal results from the fact that municipal corporations derive all their powers from their charters.

Arnott v. City of Spokane, 6 Wash. 442, (1893).

A "contract contrary to the terms and policy of a legislative enactment is illegal and unenforceable. *South Tacoma Way, LLC v. State*, 169 Wn.2d 118, 233 P.3d 871 (2010) ,

We live in interesting times, witnessing amazing innovations in communications. *Issaquah* was troubling for the trial court. This Court can clarify the issue —that broadband is a municipal utility, and City's authority to operate Click!, granted under *City of Tacoma v Ratepayers* (1997), remains valid. *Supra* Pg. 3

Cities commonly provide essential utilities for their citizens. Municipal broadband networks like Click! are common. For a list of municipal networks, see the appendix in President

Obama's report, Community-Based Broadband Solutions, *at* CP 591-627. In Washington, the City of Anacortes provides broadband for its citizens. *See*: 1078-91. PUDs around Washington state provide this essential service. CP 827-34

Consider Covid-19 to understand how essential Click! is. As the world shut down, as schools, businesses, courts, and government offices shuttered, as citizens quarantined at home, Click! "*continued*" providing its essential services.

Ratepayers shopped online from the safety of their homes, telecommuted to work and school remotely, attended meetings online, visited doctors, courts, government agencies, friends and family, obtained news and entertainment, —all over Click!'s state-of-the-art broadband system —via a single strand of citizen-owned cable coming into their homes.

RCW 35.94 has only been interpreted once, under *Bremerton Municipal League v. Bremer*, 15 Wn.2d 231, 130 P.2d 367 (1942) finding a "public utility" was "any kind of utility in whose operations the public has an interest." *Bremer*, at 237.

This Court is bound by stare decisis to follow *Bremerton*, for Click! is undeniably an essential public utility.

When citizens granted City the privilege of operating TPU, they did not divest themselves of every managerial function associated with the operation of an enterprise.

Council cannot decide they're tired of running the citizens' municipal broadband utility and sell it. Click! is not a "luxury".

By Charter 4.6, the people retain express power over disposal of their essential utility property.

CONCLUSION

When City substantively violates express statutory requirement for prior voter approval upon the disposal of essential public utility property, City's contract for privatization is wholly void, annulled and of no legal effect under the primary *ultra vires* doctrine.

I pray this Court will return Click! to its rightful owners, the citizens of Tacoma.

I certify the word count for this document is 11,959,

RESPECTFULLY SUBMITTED January 31, 2023.

Thomas McCarthy
801 S Cushman Ave,
Tacoma, WA, 98405

APPENDIX A

DIVISIONS
Light
Water
Belt Line

Please address reply to:
City of Tacoma
Department of Public Utilities
P. O. Box 11007
Tacoma, Washington 98411

Attention:

City of Tacoma
WASHINGTON

DEPARTMENT OF PUBLIC UTILITIES
A. J. Benedetti, Director

March 20, 1973

Washington State Legislature
The Senate
Committee on Local Government
Chairman and Committee Members

Re: Senate Bill 2835

Dear Sirs:

This letter is in reference to the subject bill recently introduced and referred to your committee and which should be promptly enacted in the best public interest. The background of the need for this amendatory legislation has been previously discussed with and furnished to the sponsors, Senators Rasmussen, Gardner and Peterson (Ted), and is restated herein for your full consideration.

During the routine course of ownership of a municipally owned public utility, various types of plant and properties are acquired for additions and betterments to the utility system. Some of these properties in turn become surplus to the utility needs and nonessential to continued effective utility service. The orderly procedure for the disposition of such properties under the general powers of cities of the first class (RCW 35.22.280(3)) has been clouded by the authority and procedure regarding the lease and/or sale of public utility works set forth in Chapter 35.94 RCW. Sections 35.94.020 and .030 require a formalized procedure with a confirming approval of the voters on a ballot proposition. Such procedure is, of course, desirable where in fact all or an integral part of an operating utility is to be so disposed of. However, the procedure is completely impractical for example in the disposition of property and equipment, lands, substations, and other parts and segments of facilities no longer required for utility service. Where surplus lands are to be leased or sold the purchaser may require substantial title insurance and/or require warranty of title and the right to convey protecting secondary financing for his projected improvements. Chapter 35.94 RCW as now enacted unfortunately prevents this. Thus, more flexibility of procedure is desirable and in the best public interest.

The proposed amendment would accomplish greater procedural flexibility in such transactions without repealing

the formalized procedures in the proper situations. The proposed amendment merely adds a new section providing that upon finding and determination, expressed in a resolution adopted by the Legislative authority of the City, that the property is surplus and nonessential to continued effective utility service, it can be leased or sold in such manner and on such terms as are in the best public interest for the orderly disposition of the same.

The flexibility sought is reasonably consistent with that long enjoyed by Public Utility Districts under RCW 54.16.180, and investor-owned utilities. In many situations the local taxing entity will receive additional revenues when the surplus properties are returned to taxable status.

In summary then, for all these reasons, this is legally sound, desirable, necessary and helpful legislation and should be promptly enacted in the best public interest.

Thank you for your assistance.

Very truly yours,

A. J. Benedetti
Director of Utilities

APPENDIX A-1

authorities to sell, lease, or convey property originally acquired for public utility purposes which it determines is surplus to the city's needs and not required for public utility service.

Requires the authorizing resolution to state the fair market value or consideration to be paid and other terms in the best public interest.

Provides that present statutory requirements for closed bid procedures, and approval by the legislative authority and the voters shall not apply to such dispositions.

The committee amendment refines language with regard to what property may be disposed of in this manner; deletes unnecessary adjectives.

Chairman Douthwaite called on Mr. Paul J. Nolan, Deputy City Attorney for the Tacoma Public Utilities, who had distributed a letter to the members of the committee setting forth his favorable position on the proposed legislation. He stated it was an amendatory bill and outlined the existing law. He stated this would place property back on the tax rolls, and provided a modern and conservative way to dispose of the property. He stated he had talked with the city attorney of Seattle who agrees with him in the need for this bill, which is an amendatory bill which allows the municipal utility districts the same privileges in this instance as other public and private utility districts.

EXECUTIVE SESSION:

Bob Bartel of the Ass'n of Washington Cities, supported the bill. Rep. Kuehnle suggested a word change on Page 1, Sec. 1, Line 7. Rep. Adams moved the adoption of this amendment. It was seconded and carried. Rep. Kuehnle moved HB 939 and DO PASS AS AMENDED.

HB 812 Cities, six year street program - Rep. Kraabel, prime sponsor, explained that this removes the requirement that cities with urban areas must have a six year program for arterial street construction, as well as the requirement that each county having an urban area must have a six year program for arterial road construction. It repeals certain sections, as well as the requirement for urban arterial board to report to the highway commission and the joint committee on highways about the development of these six year programs.

Rep. Kraabel passed out material and suggested an amendment to the bill which would reinstate certain material deleted in the measure. He referred to Page 2, lines 18, 22, and 23, and felt they should no longer be stricken. A great deal of discussion followed regarding the possibility of removing this bill from the Local Government Committee and placing it in the Transportation Committee. Chairman Haussler suggested hearing the people who had planned to testify. A motion on removal of the bill from the committee was withdrawn by Rep. Laughlin.

Opposing the bill was Mr. Roger Polzin of the Urban Arterial Board, who spoke at length on the need for reinstating the deleted lines, and feared lawsuits from those areas who anticipated the continuance of the program. The balance of the funds in the program was announced as approximately eleven million dollars out of the original allotment of two hundred million dollars.

APPENDIX A-2

STATE OF WASHINGTON

LEGISLATIVE COUNCIL

LEGISLATIVE BUILDING

OLYMPIA

MEMORANDUM

TO: Representative Joe D. Haussler, Chairman
Local Government Committee

DATE: April 6, 1973

FROM: James W. Guenther
Executive Secretary

SUBJECT: Senate Bill 2835 - Docks, certain family residences

Authorizes the city, by resolution, to dispose of land, property, or equipment which was originally acquired for public utility purposes when it is deemed to be a surplus by the city. It is required that such resolution shall state the fair market value and the conditions for such disposition of the equipment.

Under the existing law, there is a long, detailed requirement for the calling of bids, passing of resolutions and all this appears to be rather cumbersome for the purpose of disposing of surplus properties. This act, however, was amended in the Senate so as to set forth some detail as to where the notices should be posted and the requirements of publications, so as to assure adequate notice to the public of the availability of such lands or equipment which is to be disposed of.

JWG:pf

APPENDIX B

About Click!

Company

Click! Network is an operating section of Tacoma Power and a multi-service broadband telecommunications provider within the electric company's service area.

Vision

To be known for excellence in:

- People – professionals committed to the highest level of customer service and satisfaction, who create and maintain a team environment in which trust, respect, honesty and dignity are valued.
- Products and services – specifically designed to meet and exceed our customer needs through innovative uses of technology.
- Performance – a technically superior network designed and maintained to serve both current and future telecommunications needs of Tacoma Power and of Click! Network customers.

Mission

To develop and deliver to all Tacoma Power customers innovative products and services made possible by the convergence of telecommunications and electric technologies.

Ownership

Click! Network is one of the largest municipally-owned telecommunications systems in the country and part of the City of Tacoma's Department of Public Utilities.

APPENDIX B-1

Back

Services

Click! Cable TV

Power

Water

Rail

Our Services

Power

Tacoma Power provides electric service to the city of Tacoma, Fircrest, University Place, Fife, parts of Steilacoom, Lakewood, Joint Base Lewis-McChord, and unincorporated Pierce County as far south as Roy.

Water

Tacoma Water provides clean, reliable water to more than 300,000 people throughout Pierce and King counties and is one of the country's oldest municipally owned water systems.

Rail

Tacoma Rail has provided rail transportation and key freight connections for customers in the greater Tacoma area since 1914. We currently serve 65 customers within three operating districts in Pierce, Thurston, and Lewis counties.

Click! Cable Network

Click! Network is an operating section of Tacoma Power and a multi-service broadband telecommunications provider within the electric company's service area.

APPENDIX B-2

Tacoma Public Utilities provides services that are vital to our quality of life

About TPU

- Management Team
- Public Utility Board
- Investors
- TPU Publications
- Latest News
- Events

Our Services

- Power
- Water
- Rail
- Click! Cable TV

About Us

Publicly owned since 1893

Largest department in Tacoma City government

Operates entirely from revenues from sale of services, not from taxes

Governed by the Public Utility Board, the members of which appoint the Director of Utilities

APPENDIX B-3

CLICK!
CLICK!
CABLE TV
2
3
4
5

APPENDIX B-4

CLICK! CABLE TV
TACOMA PUBLIC UTILITIES

253-502-8900 | CAN I GET CLICK? | MY ACCOUNT

PRODUCTS | PLANS | ABOUT | WHAT'S ON TV | CUSTOMER SUPPORT | CART

High Speed Internet, Powered By Click!

Click!'s Internet Service Provider partners provide fast and reliable internet throughout Tacoma and Pierce County. Connect all your devices in every room, with the fast speeds you need.

SELECT INTERNET PLAN

The Choice is Yours

Click! partners with two local Internet Service Providers to connect your internet service. **Advanced Stream** and **Rainier Connect** offer a variety of speed and pricing options to best fit your internet needs and the flexibility to select the right plan for you.

SELECT A PROVIDER

Internet at the Speed of Life

The Click! Network enables speeds up to 100Mbps. With that kind of speed you can quickly and easily download large files and videos, watch movies, or play games, plus connect multiple devices simultaneously, without slowing down.

TEST YOUR INTERNET SPEED

PRODUCTS

Cable TV
Internet
Internet Service Providers
Business Services

Internet Service Providers

Click! operates an Open Access Network, which is a different business model than traditional telecommunications providers. In an open-access network there is a network owner and operator, and multiple retail service providers that deliver services over the network.

Click! Powered Internet Gives You

- **Choice** - choose from one of the two local Internet Service Providers
- **Selection** - package options designed for you, no matter how many devices and TVs you want to connect to stream content or play games
- **Bundles** - Internet and phone bundles to fit your needs
- **Customer Service** - Friendly support from locally owned companies

SELECT A TV & INTERNET BUNDLE ONLINE

Service Providers

Advanced Stream

253-627-8000
www.advancedstream.com
info@advancedstream.com

Rainier Connect

253-683-4100
www.rainierconnect.com
customerservice@rainierconnect.com

CLICK! CABLE TV
TACOMA PUBLIC UTILITIES

253-502-8900

CAN I GET CLICK?

PRODUCTS | PLANS | ABOUT | WHAT'S ON TV | CUSTOMER SUPPORT

High Speed Internet, Powered By Click!

Click!'s Internet Service Provider partners provide fast and reliable internet throughout Tacoma and Pierce County. Connect all your devices in eve
speeds you need.

887

SELECT INTERNET PLAN

The Choice is Yours

Click! partners with two local Internet Service Providers to connect your int
Advanced Stream and **Rainier Connect** offer a variety of speed and pricin
fit your internet needs and the flexibility to select the right plan for you.

SELECT A PROVIDER

Home | Click! Cable TV

https://www.clickcabletv.com/

Plans and Pricing

Click! provides transport services to two Internet Service Providers (ISPs) allowing them to offer customers a number of different products and packages. Each ISP determines their own retail pricing, depending on package level. Price does not include taxes, fees, installation or additional equipment fees and are subject to change. The ISP you select will bill you directly each month for Internet service. Special offer is for new Advanced Stream customers only and is good for one year. Expires 12/31/19.

SPECIAL OFFER

Turbo

50/5 Mbps
Speed Range

- Stream high-definition video on multiple devices
- Online gaming and videos at the same time on multiple devices
- Supports household of 3 - 4 people

Starting at:
$49.99/mo
Pricing Details

CHOOSE PLAN

SPECIAL OFFER

Fast

25/2 Mbps
Speed Range

- High definition video calls
- Online gaming with multiple devices
- Supports household of 2 - 3

Starting at:
$44.95/mo
Pricing Details

CHOOSE PLAN

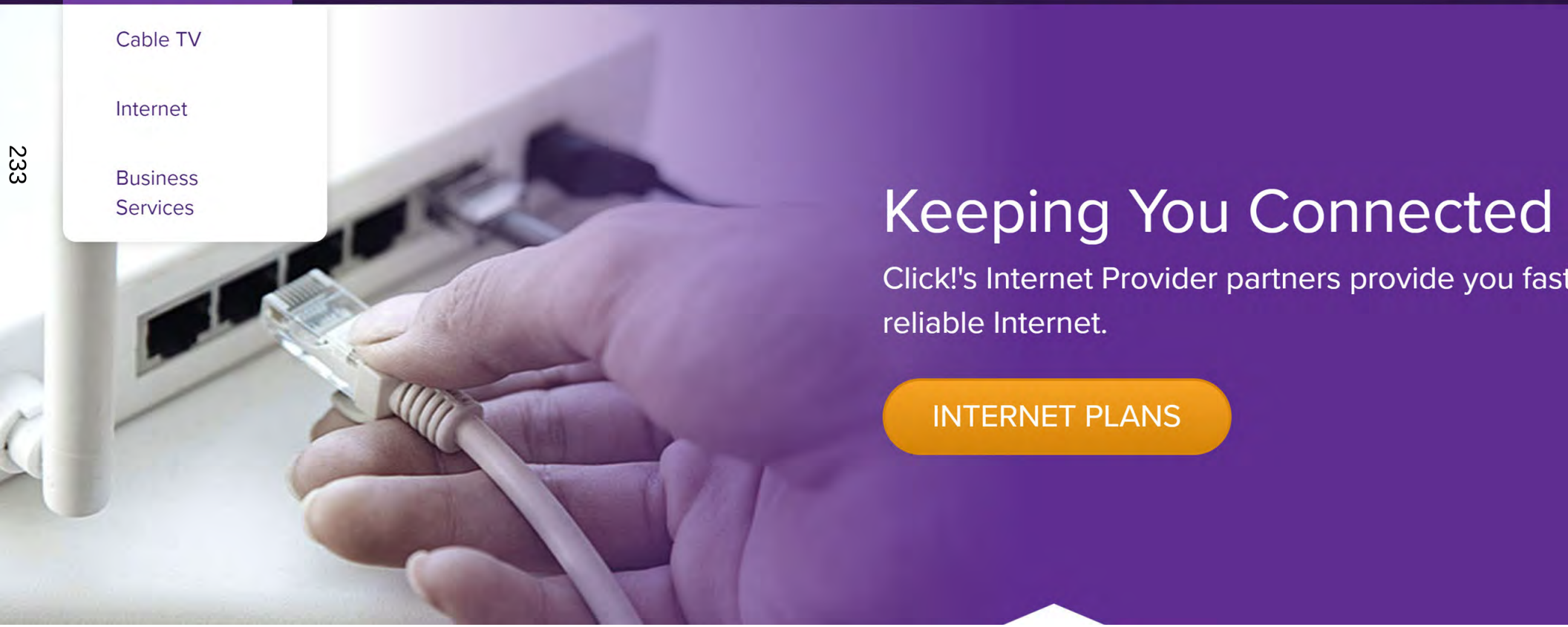
https://www.clickcabletv.com

CLICK! CABLE TV
TACOMA PUBLIC UTILITIES

253-502-8900 CAN I GET CLICK? MY ACCO

PRODUCTS PLANS ABOUT WHAT'S ON TV CUSTOMER SUPPORT CA

- Cable TV
- Internet
- Business Services



Home | Click! Cable TV

https://www.clickcabletv.com/

Plans and Pricing

Cable TV & Internet | Cable TV | Internet

Available residential plans and special offers based on your address Change Address

PACKAGE	SPEED	BEST FOR	PRICE	
SPECIAL OFFER **Extreme**	**75/8** Mbps Speed Range	• Video surveillance or "smart" home technology • Stream movies and use online applications at the same time • Supports household of 3 - 4 people	Starting at: **$59.99/mo** Pricing Details	CHOOSE PLAN
SPECIAL OFFER **Turbo**	**50/5** Mbps Speed Range	• Stream high-definition video on multiple devices • Online gaming and videos at the same time on multiple devices • Supports household of 3 - 4 people	Starting at: **$49.99/mo** Pricing Details	CHOOSE PLAN
SPECIAL OFFER **Fast**	**25/2** Mbps Speed Range	• High definition video calls • Online gaming with multiple devices • Supports household of 2 - 3 people	Starting at: **$44.95/mo** Pricing Details	CHOOSE PLAN
SPECIAL OFFER **Starter**	**10/1** Mbps Speed Range	• Basic web browsing & email • Stream music & videos • Supports household of 1 - 2 people	Starting at: **$34.95/mo** Pricing Details	CHOOSE PLAN

https://www.clickcabletv.com/

Cable TV & Internet | Cable TV | Internet

Available residential plans and special offers based on your address Change Address

PACKAGE	CHANNELS	INTERNET	EXTRAS	PRICE	
SPECIAL OFFER **Standard TV + Free HD + 25 Mbps** Learn More +	**244** View Channels	**25/2 Mbps** Speed Range	• Free HD receiver • TV Everywhere • Video On Demand • Stream movies on multiple devices • High definition video calls	Starting at: **$110.82/mo** Pricing Details	CHOOSE PLAN
SPECIAL OFFER **Broadcast TV + Free HD + 100 Mbps** Learn More +	**123** View Channels	**100/10 Mbps** Speed Range	• TV Everywhere • Video On Demand • Free HD receiver • Internet supports multiple devices • Remote supercomputing	Starting at: **$111.57/mo** Pricing Details	CHOOSE PLAN
SPECIAL OFFER **Broadcast TV + Free HD + 10 Mbps** Learn More +	**123** View Channels	**10/1 Mbps** Speed Range	• Primetime TV • TV Everywhere • Video On Demand • Basic web browsing • Stream music & videos	Starting at: **$56.57/mo** Pricing Details	CHOOSE PLAN

APPENDIX C

CREATING CAPACITY AND COMPETITION IN BROADBAND TELECOMMUNICATIONS: THE CITY OF TACOMA'S INITIATIVE

William H. Baarsma
University of Puget Sound
School of Business & Public Administration
1500 North Warner
Tacoma, WA 98416
Phone: 253-879-3393
Fax: 253-879-3156
Email: wbaarsma@ups.edu

Ross Singleton
University of Puget Sound
Department of Economics
1500 North Warner
Tacoma, WA 98416
Phone: 253-879-3591
Fax: 253-879-3500
Email: singleton@ups.edu

ABSTRACT

This paper describes the process by which the City of Tacoma, Washington came to build an open access, broadband telecommunications system designed to promote effective competition in the provision of Internet and other telecommunications services. The decision by the City's electric utility to build a state-of-the-art communications system as a strategic response to deregulation in the electric utility industry is detailed. And, the decision to provide open access to the telecommunications system to promote competition in the broadband Internet services market is considered in light of telecommunications deregulation. Tacoma's open access cable system is analyzed in the context of contestable market theory. The state of broadband Internet competition is described, as is the current regulatory framework monopoly.

INTRODUCTION

> *I don't think society has figured out how to come up with a business model that is conducive for companies to make the size of investments that are necessary to solve that problem {a shortage of bandwidth in the 21st century} with a reasonable expectation of profit but without ending up with a monopoly position.* [4]
>
> Andy Grove, Chairman of Intel Corp.
> Live Internet E*Trade Interview
> Nov. 14, 1998

In this paper the authors place the Tacoma initiative within the context of existing regulations and current competitive conditions within the telecommunications and electric utility industries. The paper begins with a brief case study narrative of the events that transpired in Tacoma. The reader is given insight into the strategic decision-making and political considerations that led to the City's policy makers' decision to approve the telecommunications overbuild—the largest even undertaken by a municipally owned utility.[8] The paper will continue with a broader perspective. Four different broadband, Internet access technologies including cable, telephony (DSL), wireless, and satellite, are described. The rationale for the FCC's refusal to regulate Internet cable access is considered. And the current legal

challenges to the main cable Internet access provider (ATT/TCI) undertaken by the City of Portland and by a coalition of telephony-based DSL Internet access providers are described.

The authors' thesis that Tacoma has developed a viable business model for building broadband capacity without creating monopoly is introduced.

TACOMA'S BUSINESS STRATEGY DECISION: A RESPONSE TO DEREGULATION

Background and context

When President George Bush stood on an oil platform in the Gulf of Mexico to sign the 1992 National Energy Policy Act, Tacoma Power's management team knew that they had to plan for more than the electric utility's centennial celebration scheduled for the following year.[6] The century old municipally owned utility would now have to provide open access transmission service to wholesale or bulk rate providers and customers on an "unbundled" basis. And although "retail wheeling" was excluded from the federal statute, state policy makers were authorized to require the same open access for those providers and potential customers as well.[9] The days of a stable, regulated and monopolized marketplace would soon be ending for Tacoma Power.

Tacoma Power's management team faced this challenge by going to the private sector for advice. They queried a number of managers from other deregulated industries—airlines and banking—in a search for new models to deal with restructuring during uncertainty. What they learned was that the successful enterprises were led by managers who could think strategically. They were also told to know computers and follow technology, invest in process automation, learn to be more efficient and, most importantly, know your customer. The last point—know your customer—led to some disquieting findings from their own market research. While Tacoma Power's customers were satisfied, they were not loyal—in fact only ten percent of their customer based expressed loyalty.[6] The management team concluded that they were facing a true paradigm crisis where "all of the traditional rules blurred, experimentation was spreading rapidly, and practices once so accepted that they were simply a part of the woodwork were (now) being called into question."[3 p. 323]

A new strategy evolves

The utility's managers chose to respond strategically by recognizing that their core business really was the reliant and efficient delivery of electrons. Thus, they sought a new paradigm—one that would steer the business, make it more reliable and customer friendly and, importantly, follow the technology. The technology in this case was fiber optics and the construction of a state-of-the art communication system for the purpose of automating the utility's distribution infrastructure.

Tacoma Power's managers realized that such a system would add considerable value for the customer: instant information on the time and location of power outages, remote connection and disconnection of services, information about electricity consumption patterns, real time pricing and appliance control systems.[2] As the utility's superintendent described it: "So what do we accomplish? We will keep the revenues going, the customers happy and we will be dispatching the crews where the problems are at."[6] In sum, the value-added services would truly put customers in the driver's seat and allow them "to control the resources" (real time pricing and appliance control) as well as to "choose the destination and route."[3 p. 181] The end result would be greater customer loyalty.

Building the system

The question now was how to build such a system. An obvious option was a strategic alliance with the private sector. But those partnerships were not available. The local phone company, cable provider and a number of competitive access providers turned down overtures from Tacoma Power's management team.[6] And so the utility decided to move forward on its own—to build the infrastructure itself. But before making the multi-million dollar investment, the utility's director requested that Tacoma Power's citizen oversight body, the Utility Board, authorize an outside review by a consultant group—the Stanford Research Institute.

The Board approved and soon SRI's consultants came back with an interesting idea: Why not invest more dollars to expand the fiber optic pipe?[6] Then Tacoma Power could offer its customers an array of services—cable television, competitive Internet access, telephony and data transport. The Telecommunications Act signed into law by President Bill Clinton in 1996 had, in fact, given Tacoma Power this option by eliminating barriers to entry into the telecommunications market. This led Tacoma Power's superintendent to proclaim: "The new law afforded us the opportunity to embark on a broader strategy—one that would allow us to add smart electrons to the worker bee electrons the utility was providing for over 100 years."[6]

Testing the market

The next step was to conduct a marketing survey. The findings were more than promising. Tacoma Power far outdistanced the competition as the preferred provider for cable television service.[10] And a financial analysis of the current market showed that a 25 percent penetration of the current customer base for cable service alone would lead to an operating profit within three years.[11] The pro forma income statement forecast over 33,000 cable customers in three years of operation. Within ten years time, the entire investment of $100 million would be paid off and Tacoma Power would have enough revenue left over to plow into system upgrades.[11] But before embarking on this major undertaking, Tacoma Power borrowed once again from the private sector. The utility pulled together a panel of fourteen experts from an array of disciplines to review and pass on a final business plan. That plan, which was given the stamp of approval by the panel, called for retail and wholesale applications. On the retail side, the planned offerings included more reliable distribution of electricity, cable television, digital audio broadcasts, Internet over television and broadband services with customized point-to-point connectivity. On the wholesale side, Tacoma Power would offer a first-of-its-kind open platform highway for Internet Service Providers and their high speed modems.

Political currents

The political dynamics revolving around Tacoma Power's plans to build a fiber optic system soon changed once the management team broadened their strategy to include an array of telecommunications services. The manager of the incumbent cable provider (TCI) sent a scathing critique of the utilities' business plan to the Tacoma City Manager. The twenty-one page letter ended with the warning: "(Tacoma's policy makers should)...pause and let the euphoria of the benefits you may now expect be replaced by a realistic appreciation of the pitfalls and risks associated with municipal ownership of what is traditionally an entertainment service provided by private enterprise."[5] After numerous public hearings, two declaratory judgements from the state superior court, a plea from the cable provider's national president and an additional due diligence review by three outside consultants, the city policy makers moved forward with the $100 million overbuild.

The following section will discuss how contestable market theory applies to the Tacoma case and will bring the reader up-to-date on current and national developments.

THE ECONOMIC RATIONALE: CREATING CONTESTABILITY IN BROADBAND TELECOMMUNICATIONS AND ENHANCING COMPETITION IN THE CABLE TV MARKET

Creating a Contestable Market in Broadband Telecommunications

There are often strong parallels between the deregulation experiences of very diverse industries. In the early years of airline deregulation, Elizabeth Bailey, then a member of Civil Aeronautics Board, called for municipalities to bear the sunk costs associated with developing new airports in an effort to make the airline industry more contestable.[1] Entry by new airlines would be much more likely, she reasoned, if they did not have to bear the risk associated with investing in their own airports - investments which presumably could not be recovered if a new airline failed.

Similarly, entry into various branches of the telecommunications industry would be more likely if municipalities bore the sunk costs associated with broadband capacity. New telecom entrants could (for an appropriate charge) simply ride the municipal system much like new airlines contract for terminal space at the municipal airport. Moreover, as the telecom market becomes more contestable (as barriers to entry are reduced through public ownership of broadband capacity), the mere threat of potential competition becomes a more viable disciplinary force within the market. Existing providers of telecom services will be less likely to charge excessive prices or permit X-inefficient practices and less

likely to become technologically lethargic because of the constant threat of potential competition. A truly contestable telecommunications market, then, will provide consumers with an increasing variety of services produced in an efficient manner and offered at competitive prices.

The City of Tacoma has designed and built a broadband telecommunications system with the express purpose of providing *competitive* telecommunications services to businesses and residents within the City. By creating an open-access architecture (a feat which, until recently, AT&T contended was economically impossible), the City has made it possible for many competing Internet service providers to gain access to the system. It would appear that Tacoma's initiative provides one possible answer to Andy Grove's lament (as expressed earlier) that there appears to be no viable model for building much needed broadband capacity without creating a monopoly position.

Creating Competition in the Cable TV Market

As noted above, the telecommunications system developed by the City also created the capacity to compete with TCI, the local cable TV provider. Though this was not the primary rationale for constructing the system, the possibility of injecting competition into the cable TV market was very attractive to local policy makers because of the poor quality of service then offered by the existing cable TV provider.[13]

The advent of competition did have its intended effect in Tacoma as the incumbent provider (now AT&T/TCI) responded to the City's entry into the market by upgrading its service. By adding fiber to its delivery system and moving to a digital format, the incumbent was able to match (or exceed) the various channel offerings the City's new system delivered. No such upgrades were provided by TCI in nearby Seattle, leaving that city at odds with its only cable TV provider.[13]

RECENT DEVELOPMENTS

Presumably in response to legal challenges from the City of Portland, GTE and the Open NET Coalition, AT&T recently announced that it will open its broadband cable Internet system to ISP providers by 2002 when its contract with @Home, the sole provider currently riding its system, expires.[14] AT&T's general counsel had previously argued, "Regulation [a requirement to provide open access] would undercut the investment needed to expand cable's broadband services. It also would deter the private investment necessary to fund the construction of new broadband facilities, which will damage competition, not spur it."[7] According to AT&T, then, monopoly control of its broadband system was technologically determined. This, in effect, constitutes a natural monopoly argument, which would appear a dangerous position for AT&T to take.

However, the FCC, under William Kennard's leadership, has supported AT&T's position, arguing "At this nascent stage in the development [of broadband], one should not presume to have a regulatory cure for every anticipated marketplace ailment. It would be imprudent to act now. We must allow the marketplace to evolve."[7] The FCC recognizes at least four developing broadband technologies – cable access, DSL access provided by telephone companies, satellite access and wireless access.

Although AT&T's promise to open its system includes a pledge to not penalize customers for choosing a provider not affiliated with AT&T, the question lingers as to whether or not those independent providers of broadband services may be at some competitive disadvantage to AT&T's affiliates. The public ownership model developed by Tacoma represents a viable alternative – an alternative which should provide a more level playing field for ISP competition.

By the end of 1999, with substantial technical assistance from Cisco Systems, Tacoma's public utility had completed the construction of an open architecture, broadband telecommunications system. It was serving over 11,000 homes with cable TV services (exceeding the 25 percent penetration goal) and had contracted with one ISP to begin the provision of residential high-speed Internet services with other ISP providers in the wings. The utility also provides high-speed data transmission services to several major companies in the Tacoma area in competition with the regional Bell telephone company. As one of only three U.S. cities wired with a fiber-optic telecommunications system, Tacoma is attracting a variety of new high-tech businesses.[12] The economic development benefits of a truly competitive, broadband telecommunications system are clear and the public ownership model Tacoma has developed appears viable.

likely to become technologically lethargic because of the constant threat of potential competition. A truly contestable telecommunications market, then, will provide consumers with an increasing variety of services produced in an efficient manner and offered at competitive prices.

The City of Tacoma has designed and built a broadband telecommunications system with the express purpose of providing *competitive* telecommunications services to businesses and residents within the City. By creating an open-access architecture (a feat which, until recently, AT&T contended was economically impossible), the City has made it possible for many competing Internet service providers to gain access to the system. It would appear that Tacoma's initiative provides one possible answer to Andy Grove's lament (as expressed earlier) that there appears to be no viable model for building much needed broadband capacity without creating a monopoly position.

Creating Competition in the Cable TV Market

As noted above, the telecommunications system developed by the City also created the capacity to compete with TCI, the local cable TV provider. Though this was not the primary rationale for constructing the system, the possibility of injecting competition into the cable TV market was very attractive to local policy makers because of the poor quality of service then offered by the existing cable TV provider.[13]

The advent of competition did have its intended effect in Tacoma as the incumbent provider (now AT&T/TCI) responded to the City's entry into the market by upgrading its service. By adding fiber to its delivery system and moving to a digital format, the incumbent was able to match (or exceed) the various channel offerings the City's new system delivered. No such upgrades were provided by TCI in nearby Seattle, leaving that city at odds with its only cable TV provider.[13]

RECENT DEVELOPMENTS

Presumably in response to legal challenges from the City of Portland, GTE and the Open NET Coalition, AT&T recently announced that it will open its broadband cable Internet system to ISP providers by 2002 when its contract with @Home, the sole provider currently riding its system, expires.[14] AT&T's general counsel had previously argued, "Regulation [a requirement to provide open access] would undercut the investment needed to expand cable's broadband services. It also would deter the private investment necessary to fund the construction of new broadband facilities, which will damage competition, not spur it."[7] According to AT&T, then, monopoly control of its broadband system was technologically determined. This, in effect, constitutes a natural monopoly argument, which would appear a dangerous position for AT&T to take.

However, the FCC, under William Kennard's leadership, has supported AT&T's position, arguing "At this nascent stage in the development [of broadband], one should not presume to have a regulatory cure for every anticipated marketplace ailment. It would be imprudent to act now. We must allow the marketplace to evolve."[7] The FCC recognizes at least four developing broadband technologies – cable access, DSL access provided by telephone companies, satellite access and wireless access.

Although AT&T's promise to open its system includes a pledge to not penalize customers for choosing a provider not affiliated with AT&T, the question lingers as to whether or not those independent providers of broadband services may be at some competitive disadvantage to AT&T's affiliates. The public ownership model developed by Tacoma represents a viable alternative – an alternative which should provide a more level playing field for ISP competition.

By the end of 1999, with substantial technical assistance from Cisco Systems, Tacoma's public utility had completed the construction of an open architecture, broadband telecommunications system. It was serving over 11,000 homes with cable TV services (exceeding the 25 percent penetration goal) and had contracted with one ISP to begin the provision of residential high-speed Internet services with other ISP providers in the wings. The utility also provides high-speed data transmission services to several major companies in the Tacoma area in competition with the regional Bell telephone company. As one of only three U.S. cities wired with a fiber-optic telecommunications system, Tacoma is attracting a variety of new high-tech businesses.[12] The economic development benefits of a truly competitive, broadband telecommunications system are clear and the public ownership model Tacoma has developed appears viable.

APPENDIX D

AMENDED RESOLUTION NO. U-10828

A RESOLUTION relating to Click! Network; authorizing Click! to prepare a business plan to provide, in addition to retail cable television, retail internet services including voice over data internet ("VoIP") protocol, commercial broadband and Gigabit service ("Retail Services").

WHEREAS the City Council of Tacoma authorized the Department of Public Utilities ("TPU"), Light Division (dba "Tacoma Power"), to implement and manage a broadband telecommunication system ("Click! Network" or "Click!" as authorized through City Council Substitute Resolution No. 33668, approved April 8, 1997, and Public Utility Board Amended Substitute Resolution U-9258 approved April 9, 1997), and

WHEREAS Tacoma Power provided retail cable TV services to customers, wholesale internet to independent Internet Service Providers ("ISPs") who served retail customers and wholesale broadband service to business customers, and

WHEREAS the broadband telecommunication system is critical infrastructure for Tacoma Power, including the connection of substations, support of approximately 18,000 Gateway smart meters, as well as providing support for the City's I-net system, and

WHEREAS the City Charter Section 4.6 requires a vote of the people before the City may sell, lease, or dispose of any utility system, or parts thereof essential to continued effective utility service, and

WHEREAS the presence of Click! Cable TV in the marketplace provided savings for all cable TV customers, regardless of provider, in the Click! Market

APPENDIX E

Telecommunications Study

by Tacoma City Light

Tacoma City Council
Public Utility Board
Joint Study Session
February 18, 1997

Why should a Publicly Owned Electric Utility be involved in Telecommunications?

- Board initiated RFP process in 1995
- Enhanced Telecommunication capability vital to the Utility in order to continue to improve service and provide choice to customers in rapidly changing environment.
- Investment in the community that provides a pathway to choice and competition.
- Over 100 years ago, Tacoma took steps to improve vital infrastructure to better serve our citizens.

Key Operational Advantages to Tacoma City Light

- Electric system control and outage reporting
  - Savings to Tacoma City Light
  - Savings to customers
- Electric system performance monitoring and preventive maintenance
- Providing interactive communication link to customers

Telecommunications Study Team

- Bruce Campbell, Metro Utility Communications Group
- F. Paul Carlson, Ph.D., Metropolitan Communications Consultants
- Linda Dethman, Dethman & Associates
- Stuart Hauser, Metro Utility Communications Group
- Peggy sue Heath, A.B.D., APEX Business Solutions
- Sandy Hunt, Ph.D., APEX Business Solutions
- Richard C. T. Li, P.E., Metropolitan Communications Consultants
- Bruce Mann, Ph.D., University of Puget Sound
- Catherine Rudolph, APEX Business Solutions
- Susan V. Marr, Metro Utility Communications Group
- Gene Starr and the research team at Market Data Research
- Staff team: Chandra Enos, Lisa Steadmon, and Steve Roberts, P.E.

Telecommunications Study
Brief Review of Part One

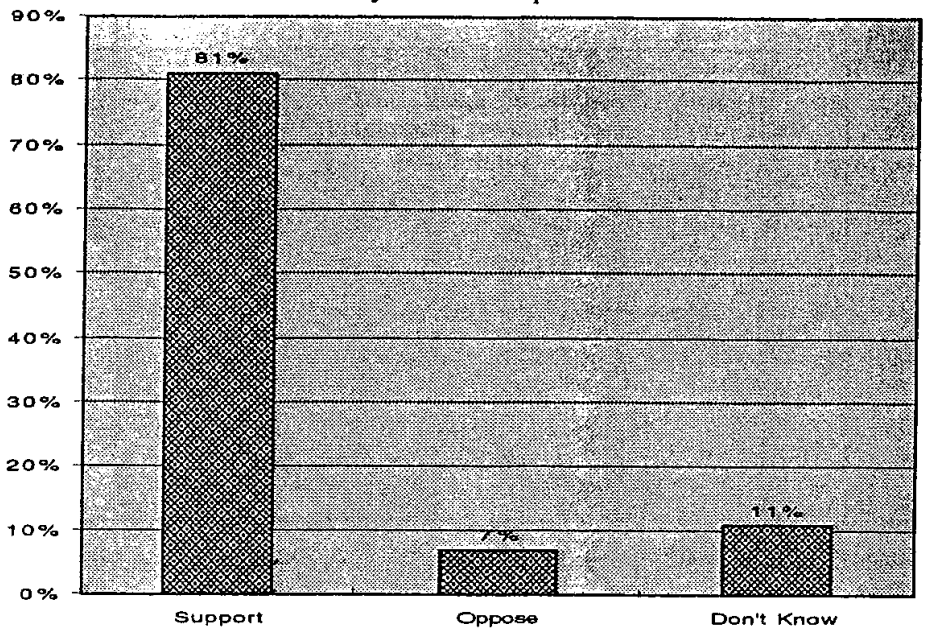
- Telecommunications technology
- Telecommunication companies
- Regulation: Federal, State, and Local
- Other cities and communities
- Local telecommunications history
- Existing telecommunications options in our local communities

Business Market Research

- Survey of 200 businesses:
  - representing $5 billion in revenue & 25,000 jobs
  - average of three locations in greater Tacoma area
- Importance of telecommunications links
  - 74% say links are extremely important to their success
  - 62% reported that a link being out one day would cause serious harm to their business; 20% said that it would shut them down
- 61% of businesses use Internet (but with limited access)
- 14% of employees telecommute (increasing to 18% in 2yr)
- Limited Experience with High Speed Lines
  - Two-thirds were not familiar with ISDN lines or T-1 lines

Support for Tacoma City Light Telecommunications System

To what degree do you support Tacoma City Light building this new communications system to improve service to customers?



Economic Development Impacts

- Market trends
  - Change in economic base
  - Downtown development activities
- Business Environment
- Telecommunications needs
  - Development activities at military bases
  - The expanding health services industry
  - Professional & financial services
  - Port of Tacoma

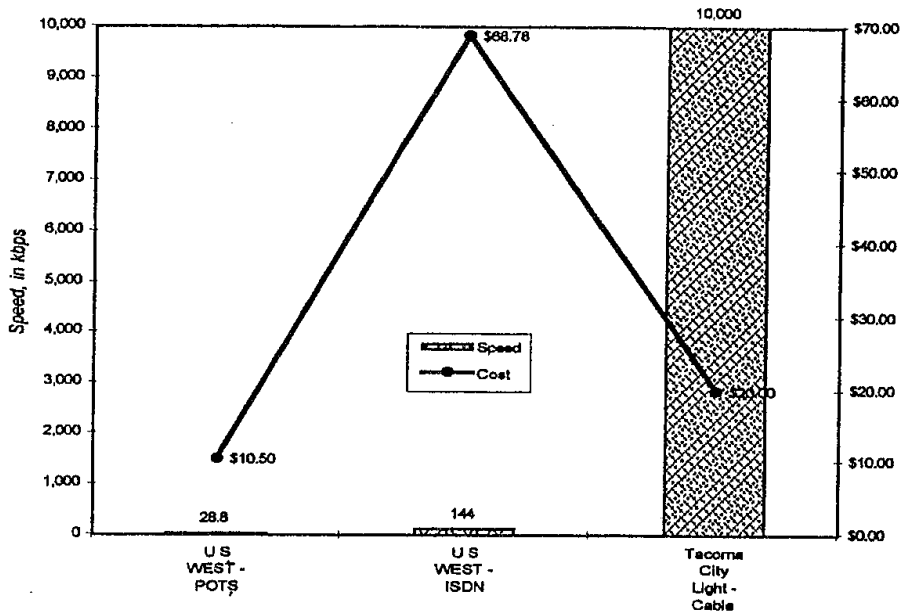
The Telecommunications System

- Multiple fiber optic rings running through out Tacoma City Light's service area
  - Secure and redundant fiber optic system
  - SONET electronics
- Fiber rings support two-way 750MHz Hybrid Fiber Coax system in residential areas reaching all homes

Public-Private Telecommunications Services

- Wholesale data and telephony transport on the fiber optic SONET system
  - Available on a non-discriminatory basis to
    - other carriers (both local and long distance companies)
      - for switched services and dial tone
    - local value added service providers
      - who would customize these high speed lines for businesses that do not maintain a telecommunications staff
    - local businesses that have the technical expertise to use the lines themselves
- High speed Internet data transport for homes and small businesses in partnership with Internet Service Providers (ISPs)
  - Light Division transports the data, the ISPs do all the rest
- Full cable television service direct to local homes by Tacoma City Light

Data Transport for Internet Access



Contacts with Private Service Providers

- Discussions with a number of private service providers about system options
- Video Providers
  - Talks were not particularly productive, the closest was:
    - Private would provide programming, advertising & billing but would not assume any system financial risk
    - Tacoma City Light would provide everything else including maintenance, cable installation, money, and name
- Other providers do want to make use of transport services to facilitate delivering other services
  - Sprint Spectrum

Conclusions

The study team set out to answer a number of questions at the outset of this project:

- What is happening on the technological front?
- Who are the major telecommunications players, what have they done in the past, and what are they doing now?
- What is happening in the regulatory environment?
- What have other communities done with regard to telecommunications?
- What has happened historically in our community?
- What do the existing telecommunications options look like?
- What kind of market demand for telecommunications exists in our community?
- What are the economic development implications for our community if an advanced telecommunications system is built or fails to be built?
- And finally, could Tacoma City Light build and operate such a system and how would it look?

This study of telecommunications has answered those questions. But there is a final question that must be asked. Should Tacoma City Light create a modern telecommunications infrastructure to serve the local community? The answers to the previous questions are critical to understanding and answering this question.

This study has reviewed telecommunications both nationally and locally. In reviewing the local situation it is clear that the local market has a growing need for better telecommunications access. Despite growing local demand, the incumbent wire line service providers have stated that their investments in the local infrastructure will either slow without significant rate increases or be halted all together. One could hope that other companies would step forward and create a modern telecommunications system through out our community but the prospects for that occurring appear dim. While Competitive Access Providers will eventually enter the local market, their focus is almost exclusively on large business users. Other potential systems are either of low capacity or not scheduled to be fully deployed until the next century.

Tacoma City Light could create an advanced telecommunications system to meet the telecommunications needs of the communities it serves in addition to its own internal communication needs. If Tacoma City Light were to create such a system and operate it in a business like manner, the system would generate sufficient revenues to make the system self sustaining. By offering products and services that either meet customer needs directly and providing a pathway through which the private sector can meet additional needs, pricing those products and services competitively, and delivering them over a modern, high-speed, high-reliability telecommunications system, a

business is created that is viable using conservative revenue projections.

The following principles provide a framework for considering whether Tacoma City Light should enter the telecommunications arena in our community.

1. The primary purposes for Tacoma City Light financing, constructing and operating a broadband telecommunications system shall be as follows:
   - Provide a state-of-the-art fiber optic technology to support enhanced electric system control, reliability and efficiency.
   - Provide capability to meet the expanding telecommunications requirements in an evolving competitive electric market, the most critical of which is real-time, two-way interactive communications with individual energy consumers.
   - Provide greater revenue diversification through new business lines (i.e., Internet transport, cable TV, etc.), enhance traditional products and services and maximize return on Tacoma City Light assets.
2. Important additional community benefits derived from this project are as follows:
   - Promote economic development and business retention.
   - Insure broad community accessibility to high quality, state-of-the-art telecommunication technology.
3. The Telecommunication Project, including all infrastructure, and proposed business lines, shall be an integral Tacoma City Light operating responsibility and function.
4. The Telecommunication Project business lines shall be operated in a business-like manner similar to electric services which are subject to market forces and are not tax supported.
5. In order to avoid the perception of government control of the content of the cable television business line, programming will be determined on the basis of local consumer demand and input.
6. The Telecommunication Project construction will reflect the current overhead to underground configuration of Tacoma City Light's electric system. Any significant divergence from this will greatly increase the project costs and jeopardize the viability of the project.
7. Tacoma City Light's Telecommunication Project will not proceed unless there is broad and strong policy and community support.

Ultimately, the question of whether Tacoma City Light should create a modern telecommunications infrastructure is one that policy makers must answer with the informed input of the community they represent. It is our sincere hope that the communities that Tacoma City Light serves will find the background information contained in this study useful.

Acknowledgments

The Telecommunications Study Team was a multidisciplinary group made up of both Tacoma City Light staff and outside consultants. There is always a concern when approaching a study of this magnitude, that a single view of the industry and market in question will prevail without rigorously examining alternative viewpoints. In the case of telecommunications, many industry experts have a tendency to view the world with either a telephone or cable perspective. Rather than hire a single consultant under a large contract to work with staff in the development of this report, the decision was made early in the project to hire multiple consultants with diverse perspectives and areas of expertise under small individual contracts. This allowed the team to examine and weigh a wide variety of ideas and perspectives and thereby ensure that the final study incorporated the best ideas and knowledge possible. This approach is not the easiest way of conducting a study of this sort since the discussions that ensue can become quite lively and challenging. Staff would like to thank the following consultants that willingly and vigorously participated in those discussions and the work of preparing this report.

Bruce Campbell, Metro Utility Communications Group
F. Paul Carlson, Ph.D., Metropolitan Communications Consultants
Linda Dethman, Dethman & Associates
Stuart Hauser, Metro Utility Communications Group
Peggy sue Heath, A.B.D., APEX Business Solutions
Sandy Hunt, Ph.D., APEX Business Solutions
Richard C. T. Li, P.E., Metropolitan Communications Consultants
Bruce Mann, Ph.D., University of Puget Sound
Mel Oyler, APEX Business Solutions
Catherine Rudolph, APEX Business Solutions
Susan V. Marr, Metro Utility Communications Group
Laura Rosenwald, Preston Gates & Ellis
Gene Starr and the research team at Market Data Research
Elizabeth Thomas, Preston Gates & Ellis

Many staff members at Tacoma Public Utilities willingly put in extra time to help the team with this study. In particular, the team would like to thank the following people: Mark Bubenik, Linda Carlton, Julie Dahlen, Alex Gebhard, Deborah Hall and the Graphics Services group, David Lerman, James Mack, Glenna Malanca, Peter Richardson, and Sue Veseth.

APPENDIX F

ORDINANCE NO. 25930

AN ORDINANCE of the City of Tacoma, Washington establishing a telecommunications system as part of the Light Division, supplementing Ordinance No. 23514 and providing for the issuance and sale of the City's Electric System Revenue Bonds in the aggregate principal amount of not to exceed $1,000,000 to provide part of the funds necessary for the acquisition, construction and installation of additions and improvements to the telecommunications system.

29

ORDINANCE NO. 25930

AN ORDINANCE of the City of Tacoma, Washington establishing a telecommunications system as part of the Light Division, supplementing Ordinance No. 23514 and providing for the issuance and sale of the City's Electric System Revenue Bonds in the aggregate principal amount of not to exceed $1,000,000 to provide part of the funds necessary for the acquisition, construction and installation of additions and improvements to the telecommunications system.

WHEREAS, the City of Tacoma (the "City") owns and operates an electric utility system (the "Electric System"); and

WHEREAS, the Ordinance provides that the City may create a separate system as part of the Electric System and pledge that the income of such separate system be paid into the Revenue Fund; and

WHEREAS, RCW 35A.11.020 authorizes the City to operate and supply utility and municipal services commonly or conveniently rendered by cities or towns; and

WHEREAS, RCW 35.92.050 authorizes cities to construct and operate works and facilities for the purpose of furnishing any persons with electricity and other means of power and to regulate and control the use thereof or lease any equipment or accessories necessary and convenient for the use thereof; and

WHEREAS, the Utility Board and the Council have determined that it is in the best interest of the City that it install a telecommunications system among all of its Electric System substations in order to improve communications for automatic substation control; and

WHEREAS, the City has determined that it is prudent and economical to provide additional capacity on such telecommunications system to provide the Electric System with sufficient capacity to perform or enhance such functions as automated meter reading and billing, appliance control, and load shaping; and

32

WHEREAS, the Light Division may wish to connect such telecommunications system to individual residences and businesses in its service area or to other providers of telecommunications services; and

WHEREAS, the City has determined that it should create a telecommunications system as part of the Electric System in order to construct these telecommunications improvements; and

WHEREAS, the City by Ordinance No. 23514 passed November 20, 1985 (as amended and supplemented, the "Ordinance"), authorized Electric System Revenue Bonds (the "Bonds") of the City to be issued in series, made covenants and agreements in connection with the issuance of such Bonds and authorized the sale and issuance of the first series of such Bonds in the aggregate principal amount of $125,505,000 (the "1985 Bonds") for the purpose of refunding all of the City's then outstanding light and power revenue bonds; and

WHEREAS, the 1985 Bonds were issued under date of December 1, 1985 and are now outstanding; and

WHEREAS, the City has heretofore issued ten additional series of Bonds on a parity with the 1985 Bonds, which bonds were issued and are now outstanding:

Authorizing Ordinance	Bonds Dated	Principal Amount Issued
23663	July 1, 1986	$ 30,000,000
24073	May 1, 1988	60,400,000
24296	May 1, 1989	48,500,000
25004	December 1, 1991	13,800,000
25004	December 5, 1991	42,400,000
25004	December 5, 1991	42,400,000
25089	May 1, 1992	31,295,000
25165	September 1, 1992	131,675,000
25333	August 1, 1993	3,318,500
25489	May 10, 1994	135,665,000

33

Section 1.1 of the Ordinance, as amended and supplemented by the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Supplemental Ordinances.

B. In this Eighth Supplemental Ordinance:

"Arbitrage and Tax Certification" means the certificate executed by the Director of Finance of the City pertaining to the calculation and payment of any Rebate Amount with respect to the Bonds.

"Bond Sale Resolution" means the resolution to be adopted by the City Council setting forth the final terms of the Bonds.

"Bonds" means the Electric System Revenue Bonds, 199__, of the City issued pursuant to the Ordinance and this Eighth Supplemental Ordinance.

"Code" means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury or the Internal Revenue Service, to the extent applicable to the Bonds.

"Eighth Supplemental Ordinance" means this Ordinance No. 25930.

"Rebate Amount" means the amount, if any, determined to be payable with respect to the Bonds by the City to the United States of America in accordance with Section 148(f) of the Code.

Section 1.3. Authority for this Eighth Supplemental Ordinance. This Eighth Supplemental Ordinance is adopted pursuant to the provisions of the laws of the State of Washington, the Tacoma City Charter and the Ordinance.

35

ARTICLE II

FINDINGS; ESTABLISHMENT OF THE TELECOMMUNICATIONS PROJECT AS A SEPARATE SYSTEM; AND ADOPTION OF PLAN AND SYSTEM

Section 2.1. Establishment of Telecommunication System. The City hereby creates a separate system of the City's Light Division to be known as the telecommunications system (the "Telecommunications System"). The public interest, welfare, convenience and necessity require the creation of the Telecommunications System, contemplated by the plan adopted by Section 2.2 hereof, for the purposes set forth in Exhibit A. The City hereby covenants that all revenues received from the Telecommunications System shall be deposited into the Revenue Fund.

Section 2.2. Adoption of Plan; Estimated Cost. The City hereby specifies and adopts the plan set forth in Exhibit A for the acquisition, construction and implementation of the Telecommunications System (the "Telecommunications Project"). The City may modify details of the foregoing plan when deemed necessary or desirable in the judgment of the City. The estimated cost of the Telecommunications Project, including funds necessary for the payment of all costs of issuing the Bonds, is expected to be approximately $40,000,000.

Section 2.3. Findings of Parity. The Council hereby finds and determines as required by Section 5.2 of the Ordinance as follows:

A. The Bonds will be issued for financing capital improvements to the Electric System.

B. At the time of issuance and delivery of the Bonds, there will be no deficiency in the Bond Fund and no Event of Default shall have occurred.

C. At the time of issuance and delivery of the Bonds, there will be on file with the City Clerk the certificate of the Director of Finance required by Section 5.2(B)(1) or Section 5.2(C) of the Ordinance.

36

EXHIBIT A

TELECOMMUNICATIONS PROJECT

The Telecommunications Project will include some or all of the following elements:

Infrastructure improvements

Construct a hybrid fiber coax ("HFC") telecommunications infrastructure consisting of fiber optic rings and branches connecting nodes throughout the Light Division service area. This telecommunications system will be asymmetrically two-way capable. It will interconnect all Light Division substations. Connections may also be made with Light Division customers and with other providers of telecommunications infrastructure and services. This telecommunications system will have 500 channels. It will utilize existing Light Division rights-of-way.

Functions to be performed by infrastructure improvements

Through construction of the HFC telecommunications system, the Light Division's Telecommunications System will be capable of performing some or all of the following functions:

- conventional substation communications functions
- automated meter reading (electric and water)
- automated billing (electric and water)
- automated bill payment (electric and water)
- demand side management (DSM) functions, such as automated load (*e.g.* water heater) control
- provision of information to customers that is relevant to their energy and water purchasing decisions (*e.g.* information on time-of-use or "green" power rates)
- distribution automation
- remote turn on/turn off for electric and water customers
- city government communications functions
- CATV service
- transport of signals for service providers offering telecommunications services (*e.g.* Personal Communications Service (PCS), video on demand, high speed data, as well as conventional wired and wireless telecommunications services)
- Internet access service

55

APPENDIX F-1

SUBSTITUTE

RESOLUTION NO. 33668

WHEREAS the City of Tacoma, Department of Public Utilities, Light Division desires to: (1) develop a state-of-the art fiber optic system to support enhanced electric system control, reliability and efficiency; (2) develop capability to meet the expanding telecommunications requirements in an evolving competitive electric market, the most critical of which is real-time, two-way interactive communications with individual energy consumers, (3) create greater revenue diversification through new business lines (i.e. internet transport, cable TV, etc.), (4) enhance traditional products and services, and (5) maximize return on Light Division assets, and

WHEREAS these desired capabilities can be provided with a broad band telecommunications system for all of the Light Division's service area, and

WHEREAS a broad band telecommunications system will have available capacity for future City Light Division needs and will also have the capacity to provide telecommunications services for data transport, high speed internet access, full cable television service, and other uses, and

WHEREAS the Light Division has retained consultants to review and analyze the feasibility of a broad band telecommunications system for the Light Division's service area, and a business plan has been prepared for this purpose (copies are on file with the Clerk), and

WHEREAS the cost of constructing, installing and commencing to operate a broad band telecommunications system will be approximately $65 million dollars, but the benefits to the Light Division, the City and the Light Division customers are projected to exceed and justify the initial cost, and

WHEREAS the City Council and Public Utility Board will continue to be involved in the future decision-making on this proposal including construction contracts and debt financing approvals, quarterly reviews on-the project direction during the startup period, approval of agreements for use of City rights-of-way for telecommunications purposes which agreements will (to the extent required by law or City Council) treat the Light Division substantially similar to other franchises that the City grants for similar businesses, and

WHEREAS the City Council hereby finds and determines that the Light Division's proposal for a broad band telecommunications system is in the best interests of the City, will serve a public purpose, and should be approved and implemented; Now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the Council hereby finds and determines that the City Light Division's broad band telecommunications proposal is in the best interests of the City, will serve a public purpose and that the said Business Plan is sufficient and adequate, therefore, the Council hereby approves the Light Division's proposal including the Business Plan and the Department of Public Utilities, Light Division is hereby authorized to proceed to implement said proposal for a broad band telecommunications system, and

That the proposed broad band telecommunications system shall be owned, operated and controlled by the City of Tacoma Department of Public Utilities Light Division with the Public Utility Board providing oversight and approval of business and third party agreements, as appropriate under the City Charter, Tacoma Municipal Code and other applicable laws, and the City Council shall continue to be involved in the major policy decisions including

construction contracts, rate setting policies, debt financings, the public rights-of-way use for telecommunications agreements and quarterly reviews.

Adopted APR 08 1997

Mayor

Attest: City Clerk

Approved as to form & legality:

Assistant City Attorney

Requested by Public Utility
Board Resolution No. U-9258

599c

RESOLUTION NO. AMENDED SUBSTITUTE U-9258

WHEREAS the City of Tacoma, Department of Public Utilities, Light Division desires to: (1) develop a state-of-the-art fiber optic system to support enhanced electric system control, reliability and efficiency; (2) develop capability to meet the expanding telecommunications requirements in an evolving competitive electric market, the most critical of which is real-time, two-way interactive communications with individual energy consumers, (3) create greater revenue diversification through new business lines (i.e. internet transport, cable TV, etc.), (4) enhance traditional products and service, and (5) maximize return on Light Division assets, and

WHEREAS these desired capabilities can be provided with a broad band telecommunications system for all of the Light Division's service area, and

WHEREAS a broad band telecommunications system will have available capacity for future Light Division needs and will also have the capacity to provide Telecommunications services for data transport, high speed internet access, full cable television service, and other uses, and

WHEREAS the Light Division has retained consultants to review and analyze the feasibility of a broad band telecommunications systems for the Light Division's service area, and a business plan has been prepared for this purpose (copies are on file with the Clerk), and

WHEREAS the cost of constructing, installing and commencing to operate a broad band telecommunications system will be approximately $65 million dollars, but the benefits to the Light Division, the City and the Light Division customers are projected to exceed and justify the initial cost, and

35. None of the foregoing statutory definitions rests on the particular types of facilities used. Rather, each rests on the function that is made available.[140] Accordingly, we examine below the functions that cable modem service makes available to its end users. The Commission's prior analysis regarding Internet access service informs our analysis.

36. In the *Universal Service Report*, the Commission found that Internet access service is appropriately classified as an information service, because the provider offers a single, integrated service, Internet access, to the subscriber. The service combines computer processing, information provision, and computer interactivity with data transport, enabling end users to run a variety of applications.[141] In the *Universal Service Report*, the Commission concluded that "Internet access providers do not offer subscribers separate services – electronic mail, Web browsing, and others – that should be deemed to have separate legal status."[142] Rather, the Commission examined specific uses of Internet access in order "to understand the nature of the functionality that an Internet access provider offers."[143]

37. The *Universal Service Report* provides several specific examples of functions that Internet access service providers typically include in their service, including e-mail, newsgroups, and the ability to create a web page that is accessible by other Internet users.[144] In addition, Internet Access service generally includes using the DNS.[145] The DNS is an online data retrieval and directory service. The DNS is a distributed system, where the data may be replicated in multiple, geographically dispersed server systems. The administration of the DNS is hierarchical, and is routinely delegated among a great many independent organizations. It is most commonly used to provide an IP address associated with the domain name (such as www.fcc.gov) of a computer; however, the DNS is also routinely used to perform reverse address-to-name lookups[146] and to identify and locate e-mail servers.[147] In addition, the DNS is

[140] *Universal Service Report*, 13 FCC Rcd at 11530 ¶ 59 (noting "Congress's direction that the classification of a provider should not depend on the type of facilities used . . . [but] rather on the nature of the service being offered to consumers.").

[141] *See id.*, 13 FCC Rcd at 11536 ¶ 73 (1998). The *Universal Service Report* advised Congress about the implementation of certain provisions of the 1996 Act concerning the universal service system. It focused in part on the relationship between universal service and the explosive growth of Internet-based information services. The report specifically reserved the question of the statutory classification of cable modem service. *Id.* at 11535 n.140.

[142] *See id.*, 13 FCC Rcd at 11537 ¶ 75.

[143] *See id.*

[144] *See id.*, 13 FCC Rcd at 11537-39 ¶¶ 76-78.

[145] For a description of the DNS, *see supra* note 74.

[146] This is accomplished by the IETF RFC #1035, *Domain Names – Implementation and Specification*, § 3.5 at 21 ("IN-ADDR.ARPA domain") (Nov. 1987). The Commission has previously found that simple reverse directory service constitutes an enhanced or information service. *US West Communications, Inc., Petition for Computer III Waiver*, Order, 11 FCC Rcd 1195, 1199 ¶ 28 (Chief, Common Carrier Bur. 1995) ("The *NATA Centrex Order* concluded that the provision of access to a data base for purposes other than to obtain the information necessary to place a call will generally be found to be an enhanced service. The presumption regarding such services, therefore, is that they are enhanced unless they are shown to be otherwise.").

[147] Cox has described some of the functions of the DNS with respect to how it is used in Cox's cable modem service offering. *See Bova Statement of Facts*, *supra* note 31, at 5 (describing Cox cable modem service as follows: "When subscribers seek to send an e-mail message, the domain name system ('DNS') server . . . provides the fully-qualified host name and Internet Protocol ('IP') address of the mail server serving the subscribers."), 6 (same: "The CoxCom cable Internet service provides IP address translation to subscribers as an integral part of the provision of the foregoing services [access to the Internet, content created or aggregated by CoxCom, storage or 'caching' of popular content or information, Internet newsgroups, web hosting services, and electronic mail]. . . . CoxCom's cable Internet service stores on its dedicated DNS servers, and allows subscribers to access and use, domain name resolution information, other Internet host information and programming that translates these commonly used

(continued....)

WHEREAS the City Council and Public Utility Board will continue to be involved in the future decision-making on this proposal including construction contracts, and debt financing approvals, quarterly reviews on the project direction during the startup period, approval of agreements for use of City rights-of-way for telecommunications purposes which agreements will (to the extent required by law or City Council) treat the Light Division substantially similar to other franchises that the City grants for similar businesses, and

WHEREAS the Public Utility Board hereby finds and determines that the Light Division's proposal for a broad band telecommunications system is in the best interests of the City, will serve as a public purpose, and should be approved and implemented; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the Board hereby approves the Light Division's proposal including the Business Plan for a broad band telecommunications system, and the Board recommends that the City Council approve a resolution to authorize the Light Division to proceed to implement said proposal for a broad band telecommunications system, and the Board recommends that the City Council continue to be involved in the major policy decisions including construction contracts, rate setting policies, debt financings, the public rights-of-way use agreements for telecommunications and quarterly reviews.

Approved as to form & legality:

G. S. Karavitis
Assistant City Attorney

Daryl Hedman
Chairman

Bil Moss
Secretary

Lydia Stevenson
Clerk

Adopted April 9, 1997

599d(a)

APPENDIX G

IN THE SUPERIOR COURT OF WASHINGTON

FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation, Plaintiff, v. THE TAXPAYERS AND RATEPAYERS OF THE CITY OF TACOMA, Defendants.	No. 96 2 09938 0 COMPLAINT FOR DECLARATORY JUDGMENT

The plaintiff, City of Tacoma, Washington ("City"), alleges the following in support of its complaint for declaratory judgment:

INTRODUCTION

1. The City plans to issue bonds in part for the purposes of constructing and operating a telecommunications system consisting of a hybrid fiber coaxial network (the "Telecommunications System"). The Telecommunications System will enhance and augment electrical utility service that the City provides to customers through the Light Division of its Department of Public Utilities. The City may utilize the Telecommunications System to provide cable television service to customers in the Light Division service area. The City may also lease Telecommunications System facilities or capacity to providers of telecommunications services.

2. The City brings this action under Chapters 7.24 and 7.25 RCW to determine the validity of Electric System revenue bonds in the principal amount of $1,000,000 (the "Revenue Bonds") that it intends to issue in part to fund the first phase of construction and operation of the Telecommunications System. The central issue in this matter is confirming that issuing the Revenue Bonds and constructing and operating the Telecommunications System are within the City's authority.

PARTIES

3. Plaintiff, the City of Tacoma, is a municipal corporation and a city of the first class of the State of Washington.

4. The Defendants herein are taxpayers of the City of Tacoma and ratepayers of its electrical utility, which is known as the Light Division of the Department of Public Utilities.

5. Harold E. Nielsen, Jr., is a resident and taxpayer of the City and a customer of the Light Division.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under Chapters 7.24 and 7.25 RCW.

7. Venue is proper because the City is located in Pierce County and the Defendants either reside in Pierce County or pay taxes based on activities or property ownership in Pierce County.

FACTS

8. The City currently owns and operates, through its Light Division, an electric utility (the "Electric System") for the purpose of providing electricity and other energy services throughout the City and other portions of Pierce County.

9. The Tacoma City Council enacted Ordinance No. 25930 (the "Bond Ordinance") on July 23, 1996, at a regular meeting. A true and correct copy of the Bond Ordinance is attached as Exhibit 1 to this Complaint. The Bond Ordinance provides for the construction and operation of a Telecommunications System within the Light Division and the issuance and sale of Electric System revenue bonds of the City in the aggregate principal amount of $1,000,000.

PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078

10. The City Council desires to issue the Revenue Bonds for the purposes and in the manner described in the Bond Ordinance.

11. In this action, the City Council desires to test and determine the City's right to issue and sell such bonds. Such right is, in turn, dependent on the City's legal authority to construct and operate the Telecommunications System as described in the Bond Ordinance.

12. The Telecommunications System will be used to improve the speed and capability of the existing real-time communications among certain Electric System substations, and to extend such real-time communications to the remaining substations. In addition, the Telecommunications System may be used to enhance such existing energy services as demand management, identification of outages, meter reading, billing and payment, and resource dispatch. The Telecommunications System may be used to perform similar functions for the City's provision of water service.

13. The City may also utilize a portion of the Telecommunications System to provide cable television service to customers within the Light Division service area, and to lease facilities or capacity to providers of video-on-demand, data transport, telephony, and other telecommunications services. By providing cable television service and/or leasing facilities or capacity to telecommunications providers, the City estimates that it could generate substantial revenue to help offset the costs of constructing and operating the Telecommunications System.

14. The City desires to maintain this lawsuit as a class action because (1) the class of defendant ratepayers of the Light Division is so numerous that joinder of all members is impracticable, (2) there are questions of law and fact common to the class, (3) the defenses of the proposed representative taxpayer and ratepayer are typical of the defenses of the class, and (4) the proposed representative will fairly and adequately protect the interests of the class.

APPLICABLE LAW

15. The City is authorized by law, pursuant to its powers as a first-class charter city under Title 35 RCW, including without limitation RCW 35.22.570, 35.22.900, 35.92.050, and 35A.11.020,

PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078

and other applicable provisions of law, to construct a Telecommunications System for the purpose of furnishing electric service to customers in the Light Division service area and controlling the use, distribution and price of such service.

16. The City is authorized by RCW 35.41.030, 35.92.100, and 35.92.105 to finance such a Telecommunications System by the issuance of the Revenue Bonds.

17. The City is authorized by law, including without limitation RCW 35.22.570 and 35.22.900, and *Issaquah v. TelePrompter Corp.*, 93 Wn. 2d 567 (1980), to utilize such a system for the provision of cable television service and/or to lease facilities and capacity to telecommunications providers.

18. The City is further authorized to provide telecommunications services by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 253, 110 Stat. 70 (1996), through the Act's preemption of any legal requirement that has the effect of preventing any entity from providing any interstate or intrastate telecommunications services.

REQUEST FOR RELIEF

The City requests the following relief:

1. An order determining that this action may be maintained as a class action pursuant to CR 23(b)(2) and certifying the creation of a defendant class comprised of all ratepayers of the Light Division.

2. Appointment of Harold E. Nielsen, Jr., as the representative of all City taxpayers and Light Division ratepayers, except any taxpayers and ratepayers who intervene in this action.

3. Allowance of a reasonable attorney's fees and costs in this action to the attorney who shall represent Nielsen.

4. Prescription of the form of notice to be given to Taxpayers and Ratepayers of the pendency of this action and of their right to intervene, and the manner of giving such notice.

5. A judgment declaring that:

PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078

a. The Court has jurisdiction over the subject matter and parties in this action.

b. The Bond Ordinance was properly enacted.

c. The City has authority under the laws of the State of Washington and the United States to utilize the Telecommunications System to provide cable television service in the Light Division service area.

d. The City has authority under the laws of the State of Washington and the United States to lease Telecommunications System facilities and capacity to telecommunications providers.

e. The City has authority under the laws of the State of Washington and the United States to issue the Bonds for the purposes set for in paragraphs (c) and (d) above and in the manner set forth in the Bond Ordinance.

DATED this 24th day of July, 1996.

PRESTON GATES & ELLIS

By _____
Elizabeth Thomas, WSBA # 11544

CITY OF TACOMA

By _____
Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney

Attorneys for Plaintiff City of Tacoma

PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078

APPENDIX G-1

The Honorable Grant L. Anderson

IN THE SUPERIOR COURT OF WASHINGTON

FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation, Plaintiff, v. THE TAXPAYERS AND RATEPAYERS OF THE CITY OF TACOMA, Defendants.	No. 96 2 09938 0 (P~~ROPOSED~~) ORDER GRANTING CITY OF TACOMA'S MOTION FOR SUMMARY JUDGMENT

This matter came on this day for hearing before the undersigned upon the City of Tacoma's ("City's") Motion for Summary Judgment. Plaintiff City of Tacoma appeared through its counsel, Elizabeth Thomas. Defendants Taxpayers and Ratepayers of the City of Tacoma appeared through their counsel, Ronald E. Thompson.

Counsel for the parties have drawn the Court's attention to the following documents: Summons, Complaint for Declaratory Judgment; Acceptance of Service; City of Tacoma's Motion for Summary Judgment; Memorandum in Support of Motion for Summary Judgment; Second Declaration of Jon Athow in Support of Motion for Summary Judgment; Defendants' Responsive Memorandum in Opposition to City of Tacoma's Motion for Summary Judgment; Declarations of Heidi Imhoff, Thomas Pagano, and Cary Deaton; City of Tacoma's Reply Brief; and Declaration of Steven J. Klein.

PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

however the court is making no finding as to the financial feasibility of the Project or as to the legality of any future bond issues. [illegible]

Based on these documents, the Court finds that there is no genuine issue as to any material fact ~~and that the facts set forth in the Declarations of Jon Athow~~ and ~~Steven J. Klein are true~~. [illegible]

Having considered the documents identified by the parties, the arguments of counsel and the record herein, the Court concludes that the following order should be entered.

The City has authority under the laws of the State of Washington and the United States to issue the Bonds for the purposes set forth in paragraphs (3) and (4) in this Court's Order dated December 13, 1996 and in the manner set forth in the Bond Ordinance.

DONE IN OPEN COURT this 9th day of May, 1997.

Grant L. Anderson
JUDGE

Presented by:

PRESTON GATES & ELLIS

By [signature]
Elizabeth Thomas, WSBA # 11544
Laura A. Rosenwald, WSBA # 25722

CITY OF TACOMA

By [signature]
Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma

Copy received 9 May 97
[signature]
Attorney for Petitioners
408 S

PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

APPENDIX H

City of Tacoma, Washington
Department of Public Utilities
Click! Network
Commercial Operations
Operational Summary (Unaudited)
September 30, 2019

	September 2019
TELECOMMUNICATIONS REVENUE	
CATV	$1,269,012
Broadband	84,071
ISP	692,362
Interdepartmental	23,360
Total Operating Revenue	2,068,805
TELECOMMUNICATIONS EXPENSE-COMMERCIAL	
Administration & Sales Expense	
Salaries & Wages Expense	143,304
General Expense	40,338
Contract Services	1,041,776
IS & Intergovernmental Services	107,816
Fleet Services	257
Capitalized A & G Expense	(674)
Total Admin & Sales Expense	1,332,817
Operations & Maintenance Expense	
Salaries & Wages Expense	208,299
General Expense	13,039
Contract Services	53,201
IS & Intergovernmental Services	2,473
Fleet Services	15,829
New Connect Capital	(4,194)
Total Oper & Maint Expense	288,647
Total Telecommunications Expense	1,621,464
Net Revenues (Expenses) Before Taxes and Depreciation and Amortization	447,341
Taxes	278,147
Depreciation and Amortization	142,269
	420,416
NET OPERATING REVENUES (EXPENSES)	$26,925

City of Tacoma, Washington
Department of Public Utilities
Click! Network
Commercial Operations
Operational Summary (Unaudited)
October 31, 2019

	October 2019
TELECOMMUNICATIONS REVENUE	
CATV	$1,324,858
Broadband	80,228
ISP	688,345
Interdepartmental	22,293
Total Operating Revenue	2,115,724
TELECOMMUNICATIONS EXPENSE-COMMERCIAL	
Administration & Sales Expense	
Salaries & Wages Expense	141,938
General Expense	72,238
Contract Services	1,027,273
IS & Intergovernmental Services	119,183
Fleet Services	1,646
Capitalized A & G Expense	(137)
Total Admin & Sales Expense	1,362,141
Operations & Maintenance Expense	
Salaries & Wages Expense	233,629
General Expense	18,355
Contract Services	44,245
IS & Intergovernmental Services	2,403
Fleet Services	17,462
New Connect Capital	(9,145)
Total Oper & Maint Expense	306,949
Total Telecommunications Expense	1,669,090
Net Revenues (Expenses) Before Taxes and Depreciation and Amortization	446,634
Taxes	287,462
Depreciation and Amortization	142,210
	429,672
NET OPERATING REVENUES (EXPENSES)	$16,962

APPENDIX H-1

MEMORANDUM

TO: Jeff Lueders

FROM: Pam Burgess

DATE: 2/28/2019

SUBJECT: Click! Network 2018 Cable TV Annual Report

The following information constitutes Click! Network's 2018 Annual Cable TV Report, as required in Section 9.2 of Ordinance No. 27846. The data is accurate as of yearend 2018.

A. Gross Revenue Report (attached)

B. Summary of activities within the Tacoma city limits:

- Total customers for each general category of service:
  - Broadcast: 11,774
  - Standard: 9,522
  - Digital: 3,233
  - Premium: 2,095

- Number of homes passed: 84,554

- Total miles of cable plant: 912.88

- Miles of overhead plant: approximately 71% = 648.55

- Miles of underground cable plant: approximately 29% = 264.34

- Other system facilities and equipment constructed:

  During 2018, 4,962 radio frequency leaks were detected and resolved, resulting in reduced interference and improved service performance. An annual fly-over test to assess the system's signal leakage in the aeronautical band was performed in March, resulting in a finding that 99.87% of points passed were within the required tolerance of signal egress.

  In 2018, Click! deployed fiber-to-the-premises (FTTP) technology for new plant extension as it is the state of the art technology for modern network architecture and enables reliable and cost efficient delivery of Gigabit internet services. FTTP is currently deployed in The Knolls, a 165 lot subdivision located in University Place. Two multiple dwelling units in Tacoma are currently under construction and being wired for FTTP exclusively. It is anticipated these complexes will be occupant-ready in the 1st quarter of 2019. Internet services delivered over FTTP will be symmetrical with same download and upload speeds ranging from 250 Mbps to 1000 Mbps.

  Several multiple dwelling unit complexes of under 100 units each were wired for Click! service delivery in 2018. One complex of note was Stadium Apartments, a 147-unit complex that is providing internet access directly through a commercial Ethernet connection over the Click! network.

APPENDIX H-2

CLICK! NETWORK
TACOMA PUBLIC UTILITIES

Click! Organization Chart

Effective: 03/13/2018

Click! Budgeted FTEs = 92
T&D HFC Budgeted FTEs = 10
Total Budgeted FTEs = 102
Vacancies = 19
Active FTEs = 83
Temp = 2

Gyaltsen, Tenzin
General Manager
(551100)

Whitmarsh, Michelle
Office Administrator
(551100)

Burgess, Pam
Business Operations
(552100)

Bacon, Pat
Technical Operations
(553200)

Yomes, Patrick
Network Admin.
(553200)

Mantle, Carrie
Sales & Marketing
(552200/552300)

Sales
(552200)
Edwards, Debra
Newman, Josh
Vacant - Tufts

Marketing
(552200)
King, Rebecca
Lorfeld, Valerie
Peterson, Bernie

WCS
(552200)
Richardson, Jewel
Vacant - Schindler

McCord, Teri
Cust. Sales & Svc.
(552500)

Customer Care
(552500)
Cook, Sean (L)
Coyne, Brenda
Cross, Dawn
England, David
Joiner, Gertrude
Leifester, Donna
Vacant - Cook
Pearson, Bill
Reed, Kristina
Walloe, Wanda
Ware, Tuashua
Whalen, Lynn
Williams, Kristi
Hatcher, Melodie
Vacant - Shinn
Ortiz, Joanie (Temp)
Clark, Donald (Temp)

Vacant - Morris
Business Systems
(552600)

Business Systems
(552600)
Kartes, Randi
Sweatt, Nathalie
Pence, Brenda

Fisher, Sheila
NSA/Dispatch
(555600)

Network Svc. Assurance
(555600)
Ahola, Matthew
Vacant - Arledge (L)
Garcia, Ruben
Kerlee, Denyse
Lee, Carmen
Roy, Matt (L)
Solus, Bill
Vacant - Vincent

Dispatch
(553600)
Vacant - Wanda
McClatchey, Shawn
Whitmore, Barb (L)
Wiggins, Chuck

Jamison, John
Service Installation
(553500)

Installation
(553500)
Vacant - Torres (AS)
Browitt, Dan
Busenius, Carl
Vacant - Kleindl
Klock, David
Newell, Kirk
Freeman, Scott (AS)
Bodine, Christopher
Foster, Michael
Hathaway, Jason
Simmons, Jeff
Sullivan, Dan (AS)
Luckey, Mandrell
Minnich, Levi
Richmond, Shawn
Schweickert, Jesse
Vacant - Schulz
Keeley, Dan
Vacancy - Hempel
Vacant - Taylor
Vacant - Hall

Ostrus, Ken
CIC Warehouse
(553700)

CIC
(553700)
Burns, Karen
Choe, Gil
Whitfield, Derrek

Rudi, Greg
Network Operations
(555300)

Network Engineers
(555500)
Merriam, Steve
Vacant - Peterson

Network Operations
(555300)
Hogan, Tim (L)
Young, Rob
Clements, John
Lindberg, Jon (L)
Sherman, Randy
Swiger, Todd
Taylor, Craig
Wisor, Steve
Vacant - Hansen

Interactive Svcs
(555400)
Jacobs, Patrick (L)
Vacant - Goodwin
Van Tuyl, Ted (L)
Vacant - Cross
Kim, Hong
Vacant - Ortiz
Vance, Gary

Ken Mathes
Power Spvr III

HFC Construction
(562700)
Bagely, Ken
West, Tom
Elliot, Joe
McFadden, Pattricl
Ramsdell, Tyson
Pia, Ray

HFC Engineering
(562800)
Quinones, Kim
Netcher, Greg
Collier, Regina

APPENDIX H-3

Description of Services Ordered and Certification Form 471

Universal Service Administrative Co.

FCC Form 471

Application Information

Nickname 19TPL-471-C1

Application Number 191019585

Funding Year 2019

Category of Service Category 1

Billed Entity

Tacoma Public Library
1102 Tacoma Ave S Tacoma WA 98402
253-292-2001
cbassett@tplonline.org

Billed Entity Number 17001842

FCC Registration Number 0011877545

Applicant Type Library System

Contact Information

Joseph Pillo
203-306-1722
jpillo@eratefirst.com

Consulting Firms

Name	Consultant Registration Number	City	State	Zip Code	Phone Number	Email
E-Rate First	16065884	Milford	CT	6460	203-306-1722	jpillo@eratefirst.com

Entity Information

Library System - Details

BEN	Name	FSCS Code	Urban/ Rural	School District Name	School District BEN	Library System Attributes
17001842	Tacoma Public Library		Urban		352041	Public Library System

Related Entity Information

Related Child Library Entity - Details

BEN	Name	FSCS Code	Locale Code	Urban/ Rural	Total Square Footage	School District Name	School District BEN	Library Attributes
115884	MOTTET BRANCH LIBRARY		999	Urban	5025			Public Library
115905	GEORGE O SWASEY BRANCH LIBRARY		999	Urban	9686			Public Library
115925	GRACE R MOORE BRANCH LIBRARY		999	Urban	15487			Public Library

BEN	Name	FSCS Code	Locale Code	Urban/ Rural	Total Square Footage	School District Name	School District BEN	Library Attributes
115933	SOUTH TACOMA BRANCH LIBRARY		999	Urban	7475			Public Library
115944	KOBETICH BRANCH LIBRARY		999	Urban	5000			Public Library
115966	FERN HILL BRANCH LIBRARY		999	Urban	7996			Public Library
145280	TACOMA PUBLIC LIBRARY		999	Urban	95727	TACOMA SCHOOL DISTRICT 10	145279	Main Branch; Public Library
189853	WHEELOCK BRANCH		999	Urban	16932			Public Library

Discount Rate

Associated School District Full-time Enrollment	Associated School District NSLP Count	Associated School District NSLP Percentage	Library Urban/ Rural Status	Category One Discount Rate	Category Two Discount Rate
30221	16811	56.0%	Urban	80%	80%

APPENDIX H-4

Transparency Disclosures

City of Tacoma, Dept. of Public Utilities, Light Division dba Click! Network

FRN 0007466642

Type of ISP Service:	Click! Network provides wired broadband Internet access service using the Data Over Cable System Interface Specification (DOCSIS) platform, on a wholesale basis for resale by qualified Internet Service Providers	
Effective date:	June 11, 2018	
Submission type:	Initial Disclosure	
Version History:	Original	6/11/2018
	Revision 1 - speeds	2/1/2019

Click! Network, a section of Tacoma Power, strives to provide information to customers and end users about all of its services in a transparent manner. Additionally, the Federal Communications Commission (FCC) requires that Click! Network and other providers of broadband Internet access services disclose certain information about those Internet services. The purpose of this document, in addition to the disclosures, terms and conditions posted at www.clickcabletv.com, is to assist consumers in finding the information needed to make an informed decision about which services best meet their needs.

Click! Network operates a network consisting of a fiber optic backbone, fiber optic rings, and a hybrid fiber-coaxial (HFC) distribution system throughout Tacoma, University Place, Fircrest, Fife, and portions of Lakewood and unincorporated Pierce County that fall with the service territory of Tacoma Power, a division of Tacoma Public Utilities owned by the City of Tacoma, Washington. These disclosures will be updated as necessary. Questions can be directed to 253-502-8900 or customercare@click-network.com.

Use of broadband Internet access services on the Click! network is governed by:

- Internet Acceptable Use Policy
- Bandwidth and Network Management Policy
- Open Internet Policy

These policies can be accessed at www.clickcabletv.com/legal-notices. In addition, there may be governing policies published by the Internet Service Provider with whom the end user establishes a service account. Please refer to the ISP's disclosure statements and/or website for those details.

Certification of Filing Accuracy

I, Tenzin Gyaltsen, General Manager of Click! Network, hereby certify that I have examined the information contained in the disclosure and that all information contained in the submission is true and correct to the best of my knowledge, information and belief.

Date:

Tenzin Gyaltsen, General Manager

Network Management Practices

General Summary

Click! Network maintains a system on which the Internet is offered to customers, through authorized and trusted third parties, as an open platform providing customer choice with full access to all lawful content, services, sites, platforms, network compatible types of equipment, and applications. The Click! network is designed for usage by typical residential and commercial users of broadband Internet access services. Bandwidth on the network is a limited, shared resource among Click! Network's customers (including commercial customers, carriers and Click! Network Authorized ISPs/resellers and their customers and end-users) and other users of Click! Network's broadband Internet access service. Click! Network actively manages its network to ensure that activity resulting in excessive or sustained bandwidth consumption, which may burden the network and affect other users, is limited. Accordingly, such usage may be restricted.

Click! Network strives to provide users the best experience when using the network and may use tools and techniques to manage its network, deliver the service, and ensure compliance with its policies. These tools and techniques are dynamic, like the network and its usage, and can and do change frequently. For example, these network management activities may include (i) identifying spam and preventing its delivery to user e-mail accounts, (ii) detecting malicious Internet traffic and preventing the distribution of viruses or other harmful code or content, (iii) limiting speeds during periods of extended congestion, (iv) requiring an upgrade or purchase of a different Internet service and (v) using other tools or techniques that Click! Network may be required to implement in order to meet its goal of delivering the best broadband Internet experience to all users.

Click! Network does not:

- Discriminate among specific uses, or class of uses, on its network
- Impair, degrade or delay VoIP applications or services that compete with its video services or services of its affiliates
- Impair, degrade, delay or otherwise inhibit access by customers to lawful content, applications, services or non-harmful devices, subject to reasonable network management
- Impair free expression by slowing traffic from certain web sites
- Demand pay-for-priority or similar arrangements that directly or indirectly favor certain traffic over other traffic
- Prioritize its own applications, services or devices or those of its affiliates
- Block lawful content, applications, services, or non-harmful devices, subject to reasonable network management

With regard to specific disclosures required by the Federal Communications Commission, Click! Network's practices and policies are as follows:

Blocking

Click! Network does not block any lawful content or application, subject to reasonable network management practices and Click! Network's Internet Acceptable Use Policy, Bandwidth and Network Policy, and Open Internet Policy.

Throttling

Click! Network does not discriminate among specific uses, or class of uses, on its network, throttle traffic from certain web sites, or otherwise impair, degrade, delay or otherwise inhibit access by customers to lawful content, applications, services or non-harmful devices, subject to reasonable network management.

Affiliated Prioritization

Click! Network does not prioritize its own applications, services or devices or those of its affiliates.

Paid Prioritization

Click! Network does not prioritize any traffic over its network in exchange for consideration.

Congestion Management

Congestion management on the network is approached from an agnostic perspective and with the objective of ensuring an optimum experience for all users of the network. Click! Network uses industry standard tools and generally accepted best practices to protect its network and customers' experience. Specifically, Click! Network actively monitors activity on its network and takes action as needed to augment capacity, balance usage across network service groups and mitigate excessive use. It is difficult to forecast congestion, so Click! Network cannot describe its frequency; however, Click! Network endeavors to minimize the frequency and extent of congestion to the greatest extent practicable.

The network management tools and techniques employed by Click! Network do not and will not target specific usages or applications (such as peer-to-peer) and instead focus in a content-neutral manner on bandwidth usage in real time, with the goal of providing reasonable and

equitable access to the network for all similarly situated customers. In other words, to the extent that the use of network management practices may affect the performance or other characteristics of Internet service, they are designed to affect all similarly situated customers equally.

Excessive use means bandwidth or data usage that is significantly higher than typical usage for which our network is designed, and will be determined in the sole judgment of Click! Network. Excessive users consume so much data that their usage could negatively impact the service provided to other customers. In order to ensure an optimized Internet experience for all users, data guidelines have been assigned to all Internet services, and are subject to change. Current data usage guidelines are always available at https://www.clickcabletv.com/about/legal-notices/bandwidth-and-network-policy/.

If Click! Network in its sole but reasonable discretion determines that a user has exceeded the Excessive Use threshold or is using the service in a manner significantly uncharacteristic of a typical user of the service to which they have subscribed, Click! Network may (a) adjust, suspend, limit or terminate service at any time and without notice; or (b) require the user to upgrade their service level or pay additional fees in accordance with the ISP's then-current, applicable rates and charges for such service; or (c) use any technology to be chosen by Click! Network at its sole discretion to limit the user's service for purposes of conserving bandwidth.

Residential Package	Package Description	Data Guideline per Billing Cycle
10 Mbps	10 Mbps down/1 Mbps up	300 GB
25 Mbps	25 Mbps down/2 Mbps up	300 GB
50 Mbps	50 Mbps down/5 Mbps up	350 GB
75 Mbps	75 Mbps down/8 Mbps up	400 GB
100 Mbps	100 Mbps down/10 Mbps up	500 GB

Commercial Package	Package Description	Data Guideline per Billing Cycle
10 Mbps	10 Mbps down/2 Mbps up	300 GB
25 Mbps	25 Mbps down/5 Mbps up	400 GB
50 Mbps	50 Mbps down/8 Mbps up	500 GB
75 Mbps	75 Mbps down/10 Mbps up	600 GB
100 Mbps	100 Mbps down/10 Mbps up	800 GB

Application-Specific Behavior

Click! Network does not block or rate control any specific protocols, or modify any protocol field in ways not prescribed by the protocol standard. Certain ports may be blocked in residential packages for the purpose of spam prevention and network security. No functions of the network are designed to inhibit or favor certain applications or classes of applications.

Prioritization is employed in certain Internet package configurations that are designed for voice traffic. The configuration assigns a higher processing priority (QoS) to voice traffic and the cable modem termination system processes that traffic before lesser priority data packets when it detects network congestion. The purpose of this QoS assignment is to maintain voice quality.

Users are expected at all times to comply with Click! Network's Internet Acceptable Use Policy, Bandwidth and Network Policy, and Open Internet Policy, which do prohibit certain activities which the network is not designed to support. For instance, users may not run a server in connection with Click! Network's residential services, nor provide network services to others via Click! Network's residential services. Examples of prohibited uses include, but are not limited to, running servers for mail (pop3 & smtp), http, https, FTP, IRC, DHCP and multi-user interactive forums.

Device Attachment Rules

Click! Network allows devices to be attached to the network that are CableLabs certified DOCSIS 3.0 or higher, that are fully supported for firmware upgrades by the manufacturer, and that do not harm the network.

Security

Click! Network manages its network in an effort to provide an optimum experience for its customers by using industry standard tools and generally accepted best practices and policies to protect its network and customer information. Click! Network reserves the right to utilize network tools and practices to prevent harmful or illegal activity, denial of service attacks, viruses or other malicious code, or transfer of unlawful content including copyright infringing files. Click! Network notifies its Internet Service Provider partners when allegations of such activities are received specific to individual end users, and reserves the right to terminate service to end users without notice for repeated allegations of violations. Click! Network cannot guarantee the prevention of spam, viruses, security attacks, or other actions which can affect service. End users are required to take all necessary steps to secure and manage the use of the services received over the Click! network. To prevent such events, Click! Network monitors its

network and will take active measures to minimize the effects of spam, viruses, security attacks, and other actions which could impact an optimum experience for customers.

Performance Characteristics

Service Description and Performance

Click! Network consists of a system of fiber optic and coaxial cabling and associated equipment that enables provision of broadband Internet access service using the DOCSIS 3.0 specification through a cable modem. Click! operates an Open Access Network, whereby service is delivered to end use customers by qualified third party Internet Service Providers, not by Click! Network. Retail pricing of services is set by the Internet Service Providers and therefore cannot be included in these disclosures. Retail pricing information is available directly from each third-party reseller.

Currently authorized third party resellers include:

Advanced Stream
253-627-8000
www.advancedstream.com
info@advancedstream.com

Rainier Connect
253-683-4100
www.rainierconnect.com
customerservice@rainierconnect.com

As of the effective date of this Disclosure Notice, the following residential services are made available for resale:

Package	Advertised Download	Advertised Upload	Actual Download	Actual Upload	Latency
Ultimate	100 Mbps	10 Mbps	101.9 Mbps	10.6 Mbps	9 ms
Extreme	75 Mbps	8 Mbps	75.2 Mbps	8.5 Mbps	9 ms
Turbo	50 Mbps	5 Mbps	50.6 Mbps	4.9 Mbps	9 ms
Fast	25 Mbps	2 Mbps	25.6 Mbps	1.94 Mbps	10 ms
Standard	10 Mbps	1 Mbps	10.4 Mbps	1.02 Mbps	9 ms

Actual performance measurements were initially collected in July 2018 and again collected in January 2019. These tests were run using a standard laptop with a 1 Gbps interface. The cable modem used for testing was an Arris CM3200 with 32x8 channel bonding capabilities. The tests were performed from an edge point on the network to an external speed test server located in a city about 35 miles from the network.

Impact of Non-Broadband Internet Access Service Data Services

Wholesale commercial Ethernet Data Services up to 10 Gbps are delivered over a separate fiber network for resale by data carriers. Interoperability of the Carrier Ethernet grade of products is certified by the Metro Ethernet Forum (MEF). Other services on the network include transmission of data from certain Internet-connected power meters. These power meters transmit data only within the network, never acquire a public IP address, and transmit data on a frequency separate from the commercial broadband Internet access service traffic. The operation of the power meters and carrier Ethernet product have no impact on the performance of the commercial Internet access products.

Commercial Terms

General Description

Certain Internet services are configured to provide additional features for use by commercial enterprises. The advertised and actual speed performance of the commercial services are the same as the above residential services. Commercial package configurations allow for running mail servers (pop3 and smtp), http and https, FTP, IRC and DHCP. Static IP addresses are included with commercial packages. Retail services are governed by the policies described above and available at www.clickcabletv.com/legal-notices. End users are also bound by the terms of service of the third-party reseller of Click! Network services to which they subscribe.

Prices

As detailed previously, Click! Network offers retail services exclusively through unaffiliated third-party resellers. Pricing information, including monthly prices, usage-based fees, early termination fees, or other costs for additional services, are not within Click! Network's control and therefore are not included in this disclosure.

Privacy Policies

Personally identifiable information of Internet service end users is collected as supplied by the Internet Service Providers for use in providing Services to those end users. This information is not used for any non-network management purposes and is not shared with third parties by Click! Network. As a municipal corporation of the state of Washington, Click! Network is subject to the Washington State Public Records Act (Chapter 42.56, R.C.W.). We may disclose personally identifiable information pursuant to a valid request made under the Public Records Act if and as required to do so by the Act and/or pursuant to a court order, subpoena, civil investigative demand or other legal process.

Click! Network does not inspect or store network traffic, except to the extent network tools associate IP address assignments to individual end users as identified by the Internet Service Provider.

Redress Options

Informal complaints or questions may be directed to 253-502-8900 or customercare@click-network.com. Informal complaints will be investigated and the results will be communicated to the complainant. Formal complaints may be made in writing, including all pertinent information and the complainant's name, address, telephone number and email address (if applicable) and sent to 3628 S. 35th St., Tacoma, WA 98409, or delivered in person to that address during business hours as listed on our website at www.clickcabletv.com. Responses to formal, written complaints will be delivered in writing.

APPENDIX H-5

CLICK!

Financial Status

Click! Network commercial revenues declined from $27.3 million in 2015 to $26.7 million in 2016. The retail cable TV customer base dropped 4.6 percent ending the year with 17,468 active customers, and the Internet cable modem customers served by the three wholesale Internet Service Providers (ISPs) - Advanced Stream, Net-Venture, Inc., and Rainier Connect, grew by .4 percent ending the year with 23,344 active customers. Click! provided 173 broadband transport circuits to Click!'s wholesale service providers allowing them to provide an array of telecommunication services to many businesses in the service area. Additionally, Click! continued to provide the City of Tacoma I-Net services to approximately 190 sites, keeping the cost of telecommunications low for many government entities, and also provided support for just over 15,000 gateway power meter connections.

Cable TV Rate Adjustments

Because a final policymaker decision regarding Click! Network's long term business plan remained outstanding in 2016, no cable television rate increases were implemented. Although Cable television prices continue to remain under market, the postponement of rate adjustments contributed to the decline in revenues.

Channel Additions

During 2016, Click! Network migrated 10 networks from optional service levels to its Broadcast package and migrated Big Ten Network and Sprout from its Sports & Family package to its Click! ON Digital package. Three networks discontinued operations in 2016, Pivot, UWTV, and MundoMax, but TV Tacoma HD was added, bringing the total to 376 video and 65 audio channels. Click! also added a variety of national and local video on demand content for a total offering of over 12,000 hours of content to make the product more competitive. Additionally, Click! added new networks to its Watch TV Everywhere service. Click!'s cable TV customers can now enjoy watching Click! video content from 84 networks on any of their mobile devices with an internet connection.

Website Improvements

Click! Network launched a new website in June 2016. Improvements included streamlined navigation, responsiveness to mobile device screen sizes, enhanced TV listings, and an online shopping cart. Click! cable television products, along with ISP internet packages, are now prominently displayed, enabling the potential customer to select services and submit a self-service order online.

Customer Satisfaction Survey

Customer Satisfaction survey cards were mailed to all new cable TV customers and to all customers who had a service related issue. Click! customer service and technicians representatives received ratings averaging 3.7 and 3.8 respectively on a scale of 1 – 4. In addition, a Customer Satisfaction Survey conducted on Click! Network's behalf by Washington State University's Social & Economic Sciences Research Center (SESRC) showed a mean average overall customer satisfaction score of 8.08 on a 1-10 scale. The results revealed that customers are very satisfied with the services provided by Click! and in particular, recognized the quality of service provided by our Sales and Service Representatives and Service Technicians.

New Tools

Click! purchased the CPAT Flex Digital Leakage Monitoring System to address concerns about interference from cable leakage in the aeronautical and LTE bands. The CPAT Flex Digital Leakage Monitoring System automates the signal leakage detection process freeing up technicians for other tasks. Since the tool is continuously monitoring the network, signal leakage is quickly detected and repaired.

Click! also purchased the CheetahXD software to replace the former Cheetah Lite version. The CheetahXD software helps Click! network technicians manage the HFC network by providing end-to-end visibility across the HFC operations environment, and enables NOC personnel to proactively isolate network problems, trace root causes, assess potential impacts, and prioritize truck rolls by pinpointing fault and performance issues in real-time. With CheetahXD software, HFC network assurance is simplified, operational costs are reduced, and network performance is improved resulting in enhanced customer satisfaction.

Spectrum Reclamation

In 2015, Click! fully converted its system from analog to digital and freed up nineteen (19) 6 MHz channel slots. Since then, 6 of those freed up channels have been added to the bank of downstream Internet channels to meet the growth in customers and Internet usage. Therefore leaving 13 channels available for use.

Network Bandwidth

During 2016, Click! added NETFLIX cache servers to the local network. The addition of these cache servers has reduced bandwidth utilization by as much as 30%. Click! added an additional 10 Gig connection at Downtown South and Downtown North for a total of 30 Gig potential capacity at each location. The Core routers are being upgraded from the Cisco 7600 platform to the Cisco ASR 9912 platform. This will provide the necessary 10 gig ports and throughput to support current and future network growth. The Cable Modem Termination Systems (CMTS) are also being upgraded. The existing Cisco uBR 10000 series CMTSs are going to be replaced with new Cisco cBR-8 CMTSs. The first set of Cisco cBR-8 CMTSs were purchased during 2016. These will support DOCSIS 3.1 Gigabit services and provide higher port and bandwidth capacity for meeting bandwidth demands and subscriber growth.

APPENDIX I

CTC CONTRACT – REQUEST FOR INFORMATION

- TPU Board Resolution No. U-10988 passed January 24, 2018: Directed the City Manager and Interim TPU Director to jointly seek information from interested and knowledgeable entities to determine how the 12 adopted community policy goals can be achieved through a restructuring of Click!.

- First Step (Develop RFI): Request for Information (RFI) will be developed by CTC. The RFI is intended to solicit detailed responses from entities that may have an interest in developing a partnership with the City. The RFI will provide background information (City and Click!) and will include the City's 12 policy goals. Once released, the RFI will be placed on relevant lists and other distribution channels identified by CTC.

  March 16th (Friday): Completion date of initial draft RFI.
  March 20th (Tuesday): Draft presented to City Council and TPU Board at joint study session.
  March 30th (Friday): RFI finalized.
  April 2nd (Monday): RFI released.
  April 30th (Monday): RFI closed.

- Second Step (Ranking and Recommendations).

  Detailed Questions. After initial responses are received, high-level questions will be asked of the respondents to elicit more specific information to develop an understanding of the respondents experience, financial capability and commitment to partnering with the City.

  Ranking and Recommendations: CTC will rank responses and follow-up with the viable respondents and provide a recommendation to City Manager and TPU Director.

  May 4th (Friday): Ranking and Recommendation provided to City.

- Third Step (Follow-up): CTC will conduct in-person follow discussions with selected respondents which may include question and answer sessions between City staff and respondents and a tour of Click! facilities.

  May 11 (Friday): Complete follow-up with selected respondents.

- Fourth Step (Assessment): CTC will analyze the data and prepare an assessment of the potential opportunities and market response. The assessment will include recommendations regarding potential next steps and an evaluation of what was learned, in particular, how the 12 policy goals fit may be accommodated and what the potential outcomes might be.

  May 29th (Tuesday): Present report and recommendation to City Council and TPU Board (*Need to schedule joint study session if possible*)

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT, made and entered into effective this **9th** day of **February, 2018**, by and between the **CITY OF TACOMA**, a municipal corporation of the state of Washington (hereinafter the "CITY"), and **CTC TECHNOLOGY & ENERGY**, a Maryland corporation (hereinafter the "CONTRACTOR");

WHEREAS in January 2018, Resolution No. U-10988 of the Tacoma Public Utility Board and Resolution No. 39930 of the Tacoma City Council were adopted establishing a vision and next steps for maximizing the value of Click! Network, and

WHEREAS, these resolutions identified twelve community policy goals and directed that the Interim Director of Tacoma Public Utilities and the City Manager work jointly to prepare requests for information, proposals and qualifications for entities expressing interest in working with the City to determine how the community policy goals can be achieved through collaboration and restructuring of Click!, and

WHEREAS, the resolutions provide that the Utilities Director and City Manager may retain the services of a consultant to assist in this work, and

WHEREAS, the City has the need for consultant services to, prepare a request for information, review and evaluate the responses to the RFI and make recommendations to the Tacoma Public Utilities Board and Tacoma City Council, and

WHEREAS the Contractor has expertise in providing public broadband network business model analysis, strategic planning and business planning and related services;

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

1. Scope of Services/Work.

A. The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables described in Exhibit "A" (Scope of Work) attached hereto and incorporated herein.

B. Changes to Scope of Work. The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by the CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

EXHIBIT "A"

SCOPE OF WORK

Scope of Work

Building on our previous work with the City, we propose to perform the following tasks:

Task 1: Prepare an RFI

We will develop and draft the technical and business components of a request for information (RFI) designed to solicit detailed responses from public and private sector entities that may have an interest in developing a public-public or a public–private partnership with the City. The RFI will also serve to inform the public and private sectors—enabling respondents to understand the potential business opportunity and, just as importantly, to understand the City's underlying policy goals as reflected in the 12 items adopted by resolution.

The RFI will also describe Tacoma and the region (i.e. Tacoma Power service area) itself—its location, demographics, and attributes—as a way to build a basic picture of market opportunities for potential bidders. The RFI will then describe the infrastructure and operations of Click! in some detail. It will then present the potential partnership opportunity in relatively simple business terms—without discussion of costs or legal structure, for example, because those are items about which we would seek input from the public and private sectors.

After setting the stage, the RFI will then ask respondents to reply to a series of relatively high- level questions, followed by a series of much more specific and pointed questions. The more detailed questions will be designed to solicit useful information from potential partners about their interest in partnering with the City, their existing operations, their experience, their financial stability, and their past experience and commitment to critical City goals such as net neutrality.

The RFI will also be designed to elicit as much practical financial information as possible, including the potential willingness of public and private partners to pay for the use of Click! assets under different scenarios.

As we discussed on the phone, the fact that this process will be public and that neither the RFI responses nor our summary recommendations can be kept private may mean that some of the responses will be less concrete and clear than we would like. We are hopeful that the RFI presents an opportunity to get a sense of the market. It will be designed to do so as effectively as possible, subject to the limitation that RFI respondents are sometimes reluctant to divulge too much information that would be available to their competitors.

Our deliverable in this task will be comprehensive narrative RFI language. (We will require the City's help in terms of a description of the Click! infrastructure, information

about the technologies used, and so on, so that we can include that material in the sections we prepare.) We will provide the business and technical narrative elements of the RFI and host the publication/release of the RFI, and be the point of delivery and collection of information responsive to the RFI.

Once the RFI is released, we will place the RFI on the relevant lists and in other distribution channels where we know potential partners would be notified about it. We will also make sure it is received by the dozen or so companies that we would hope would be interested in responding.

We will endeavor to complete the draft RFI by March 16th for presentation to the City Council at a joint study session with Public Utility Board on Tuesday, March 20th and will endeavor to complete Task 1 by Friday, March 30, 2018.

Our understanding is that the City intends to release the RFI on or around April 2nd, 2018 with a due date of April 31st, 2018.

Task 2: Review RFI Responses and Conduct Follow-up Calls or Meetings with Some or All of the Respondents

Once responses from the public and private sectors are received we will review and evaluate them on the City's behalf. We will rank the responses, identifying those we feel are most viable and worthy of follow-up. We will verbally advise City staff on our ranking and make recommendations on appropriate follow-up steps. Upon completion of this process, we will confer our ranking and recommendations on follow-up steps with the Public Utility Board and the City Council. We will then be prepared to conduct follow-up phone calls and meetings with the highest-ranked respondents.

We will endeavor to complete this first phase of Task 2 by Friday, May 4th, 2018.

We will then conduct in-person follow-up discussions in Tacoma with the more interesting respondents—potentially giving the respondents the opportunity to ask questions about the Click! infrastructure and tour the City's facilities, while giving the City and CTC the opportunity to ask additional questions and get more input from the respondents about their interest in the opportunity.

We will endeavor to complete this second phase of Task 2 by Friday, May 11, 2018.

Task 3: Develop a Summary Memorandum and Make Recommendations in Regard to Next Steps

Based on the data collected through the RFI (written responses) and follow-up discussions, we will write a summary memorandum and report of our assessment of the City's potential opportunities, how we think the market would react if the City were to issue an RFP, and how the City's interests could be promoted and protected. The memorandum will include a full set of recommendations for next steps, as well as

an evaluation of what we have learned about the potential trade-offs among policy goals and an analysis of potential outcomes.

We will endeavor to complete Task 3 by Tuesday, May 29th, 2018. Joanne Hovis will then be available to present the memo and recommendations, and to respond to questions, before the Public Utility Board and the City Council as requested.

Project Fees

CTC proposes to perform the tasks identified in the scope of work above for a not-to-exceed cost of $37,000. Travel costs for Joanne's trips to assist in interviews and to present recommendations will be billed separately in addition to this budget.

We will bill this work at the following hourly rates:

Labor Category	Rate
Director of Business Consulting /	$170
Principal Analyst / Engineer	$160
Senior Project Analyst / Engineer	$150
Senior Analyst / Engineer	$140
Staff Analyst / Engineer	$130
Communications Aide / Engineer Aide	$75

CTC's billing rates are inclusive of all routine expenses including administrative, accounting, and computer support, telephone calls, and photocopying. Local travel is billed at current standard mileage rates. Non-routine expenses and long-distance travel are recovered at direct cost with no mark-up.

APPENDIX I-1

Professional Services Contract – Standard contract for professional, personal and consultant services.

Public Agency – As defined in WAC 236-48-003. Shall include all agencies outlined under RCW 39.34.020.

Public Bid Opening – The process of opening submittals at the time and place specified in the Request for Bids/Request for Proposals/Request for Qualifications and Quotations, in the presence of anyone who wishes to attend.

Public Works / Public Works and Improvements (PWI) – Defined by the Department of Labor and Industries as all work: construction, alteration, repair, or improvement that is executed at the cost of a public agency. Includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction, utilities construction, and building maintenance services, including janitorial. Also applies to maintenance services performed by contract and the production and delivery of certain materials (such as sand, gravel, concrete, and similar products). Bidding for PWI involves specific state requirements. RCW 39.04.010.

Purchase Order (PO) – Purchaser's written document provided to a supplier formalizing terms and conditions of a proposed purchase transaction, such as description of the requested supplies or services, delivery schedule and freight terms, and payment terms.

Purchased Services –Non-public works services for which submittals may be evaluated merely based on price and satisfaction of minimum qualification criteria. Purchased services are typically procured using an Informal Bid, sealed Request for Bids or Request for Proposals unless a waiver of competitive solicitation applies.
Purchased services are those provided by a vendor to accomplish routine, continuing and necessary functions. Examples include services for equipment maintenance and repair, operation of a physical plant, security, and computer hardware. Generally, these services meet more routine needs of an agency for general support activities.

Purchase Requisition (PR) – Request to obtain supplies or services and authority to commit funds to cover the purchase. PRs are used to create purchase orders.

Real Property – Land and buildings and anything affixed to the land; real estate.

Request for Bids (RFB) – A solicitation method by which purchases of supplies, services, and public works, as well as offers to purchase personal property, where price is the primary evaluation factor, in conformity with the specifications and other written terms and conditions advertised by the City.

Request for Information (RFI) – A method used to gather information about a products or services, commonly done in advance of an RFP.

Request for Proposals (RFP) – A solicitation method by which purchases of supplies, services and in limited circumstances, public works, are made by competitive negotiation, in conformity with the statement of work or specification and other written terms and conditions. RFPs are used to solicit written proposals from potential suppliers. Both cost and non-cost factors are evaluated in addition to conditions of responsiveness and responsibility to achieve best value. A selection advisory committee is typically formed to evaluate the submittals. A weighted point assignment method of evaluation is often used, as well. RFPs are conducted as sealed solicitations.

Request for Qualifications (RFQ) – A solicitation method most commonly used for the procurement of architectural and engineering services per RCW 39.80. Price is not a factor in the evaluation of qualifications.

Request for Qualifications and Quotations (RFQQ) – A solicitation method in which a service or need is identified and a specific, detailed plan regarding the work to be done is identified. The purpose of an RFQQ is to permit the target community to provide qualifications to do the work and to quote the lowest price for which the work can be done. The city selects a firm on the basis of qualitative factors and price.

Respondent – Any entity or person, other than a City employee, who provides a submittal in response to a solicitation or request for information. This term includes any entity or person whether designated as a supplier, seller, vendor, proposer, bidder, contractor, consultant, merchant, service provider, or otherwise.

Responsible – The Respondent has the capability in all respects to fully perform the Contract requirements, and has the integrity and reliability that will assure good faith performance. Consideration must be given to compliance with the criteria stated in TMC 1.06.262. and 1.06.263 (when included in the solicitation). For PWI solicitations, further consideration must be given to state responsibility criteria or supplemental criteria set forth in RCW, and other applicable City program requirements such as EIC and LEAP.

Responsible bidder or respondent - A person, firm, or entity that has the capability in all respects to fully perform the contract requirements, and the integrity and reliability, which will assure good faith performance, and meets the elements of responsibility as defined in Tacoma Municipal Code and RCW.

Responsive – Responsiveness to requirements of the specification. The submittal conforms in all material respects to the terms and conditions, the specifications, and other requirements of a solicitation. For example, the submittal was received by the due date and none of the required documents were omitted.

Retainage – Payment held (retained) as required by state law on a public works contract until all contract close out requirements have been met.

APPENDIX I-2

IV. ETHICS OF PROCUREMENT

A. Gifts and Conflicts of Interest

The City is committed to providing a very fair, transparent and equitable process to our purchases. We ask all staff participating in a solicitation and/or award process to be thoughtful of any perceived or actual conflicts of interest. Many of the situations defined as prohibited conduct in the City's Code of Ethics (Reference Chapter 1.06, TMC) could arise in the procurement context.

1. Reasonable Person Standard. Purchasing seeks to avoid situations that involve conflicts of interests or the appearance of such conflicts based on inappropriate opportunities to influence the solicitation and/or award process. Purchasing uses the measures of how a reasonable person would perceive the situation. A reasonable person standard might consider how the situation would appear if covered by a news story, or viewed from the perspective of a public interest group. Common questions to ask are: Could you comfortably explain your actions? Would taxpayers believe you were acting in their best interest?

2. Limitations on gifts. City staff should refuse gifts, meals and invitations to events such as concerts or sporting events, that could be reasonably perceived as:
   - improperly influencing performance of your official duties;
   - a reward for awarding a contract; or
   - offered or given to influence, find favor, or with a reasonable expectation of creating an obligation to the giver.

   Vendors are prohibited from offering gifts during the solicitation and ensuing contract award process.

   Contact the Procurement and Payables Division manager or the Legal Department for assistance if you encounter unusual situations.

B. Former Employees as Vendors/Consultants/Contractors. Contact Human Resources before initiating a contract with former City employees.

VI. PROCUREMENT PROCEDURES OVERVIEW

A. Competitive Solicitation is the standard for City procurement and shall be followed unless an express waiver of competitive solicitation is authorized. The purpose of competitive solicitation is to foster prudent stewardship of the public's funds and to promote open and fair treatment of participants in public contracting.

B. Authorized Competitive Solicitation Processes

- Three Written Quotes process. (See Section XI.)
- Informal Solicitations – Request for Bids process. (See Section XII.)
- Sealed Solicitations (See Section XIII.), which include Request for Bids (See Section XIV.), Request for Proposals (See Section XV.) or Request for Qualifications (See Section XVI.)
- A detailed Procurement Matrix, which may be used as a quick reference guide for each process, is attached as Appendix B.
- All solicitation threshold amounts include freight but exclude sales tax.

C. Use of Current Contracts. Before you begin specification development, first check whether there is already a contract in place for the supplies or services you need to purchase. If you're unsure where or how to do this, consult your buyer or senior buyer.

D. Additional/Special Considerations. The following should be considered in every City procurement. Not all of the items below will apply in every case; however, this checklist should govern the process of putting together a City contract.

1. <u>Contract Forms</u>
   Use of City's standard contract forms are required except as permitted on a case-by-case basis after consultation with Purchasing and, if necessary, the Legal Department.
   a. Purchase Order. Includes standard terms and conditions for City procurement. Often used in lieu of a separate contractual document for supplies and occasionally for lower value services transactions.
   b. SAP "Contract." A SAP tracking document that can include transactional terms and conditions.
   c. One page contract form. Used for supplies and public works and improvements. Can be modified for Request for Proposal transactions. References and incorporates specification provisions developed by departments/divisions.
   d. Professional Services Contract. To begin professional services contract process, you must download template and trigger sheet found on Purchasing intranet site and provide to Legal Department for review and negotiation as needed. This form may also be used for personal services.
   e. Purchased Services Contract. Used for services that are not considered professional services and are not related to public works or improvement transactions. Prevailing wages provisions may be required.
   f. Statement of Services (SOS) Contract. Used for purchase of various services valued under amount specified in Section VIII. D. in lieu of Professional/Personal Services Contract. Not to be used for public works or improvement transactions.
   g. Standard Terms and Conditions for Solicitation (Section I) and Supplies (Section II) and Services (Section II). Typically included in all solicitations except for public works and improvements and surplus personal property transactions. The Standard Terms and

IV. ETHICS OF PROCUREMENT

A. Gifts and Conflicts of Interest

The City is committed to providing a very fair, transparent and equitable process to our purchases. We ask all staff participating in a solicitation and/or award process to be thoughtful of any perceived or actual conflicts of interest. Many of the situations defined as prohibited conduct in the City's Code of Ethics (Reference Chapter 1.06, TMC) could arise in the procurement context.

1. Reasonable Person Standard. Purchasing seeks to avoid situations that involve conflicts of interests or the appearance of such conflicts based on inappropriate opportunities to influence the solicitation and/or award process. Purchasing uses the measures of how a reasonable person would perceive the situation. A reasonable person standard might consider how the situation would appear if covered by a news story, or viewed from the perspective of a public interest group. Common questions to ask are: Could you comfortably explain your actions? Would taxpayers believe you were acting in their best interest?

2. Limitations on gifts. City staff should refuse gifts, meals and invitations to events such as concerts or sporting events, that could be reasonably perceived as:
   - improperly influencing performance of your official duties;
   - a reward for awarding a contract; or
   - offered or given to influence, find favor, or with a reasonable expectation of creating an obligation to the giver.

   Vendors are prohibited from offering gifts during the solicitation and ensuing contract award process.

   Contact the Procurement and Payables Division manager or the Legal Department for assistance if you encounter unusual situations.

B. Former Employees as Vendors/Consultants/Contractors. Contact Human Resources before initiating a contract with former City employees.

APPENDIX J

3628 South 35th Street

Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

DATE: July 9, 2019
TO: Chris Robinson - Power Superintendent / COO
FROM: Joe Tellez – Chief Technology Officer & Advanced Meter Program Advisor
CC: Steven Hatcher – Customer Services Manager
Joseph Wilson – Transmission & Distribution Section Manager
Tenzin Gyaltsen – Utility Technology Services Section Manager
Andre Pedeferri – Advanced Meter Program Manager
SUBJECT: Termination of the Gateway Metering Pilot in Preparation for Advanced Meter Deployment

In preparation for the deployment of advanced meters per TPU's Advanced Meter Program and to alleviate on-going risks presented by Gateway technology obsolescence, I am requesting approval to formally terminate the Gateway metering pilot effective August 31, 2019. The following is an explanation and justification of the business drivers behind this request and proposed timeline for terminating the Gateway pilot.

Ending the Gateway metering pilot will allow for implementation of an efficient bulk conversion process and stop the future expenditure of higher than normal operating costs associated with responding to Gateway metering failures. No supplier on the market today is available to cost effectively sustain Gateway meters.

The current population of Gateway meters was initially manufactured beginning in 2003 and ending in 2007. From the beginning of deployment, the meters suffered from a number of technical problems within the meter resulting in communications failures (inability to communicate with the meter through the Click! HFC network), read failures (the controller in the meter is not able to read the meter), or remote disconnect (switching on/off) failures. Most of the communications failures result from the use of poor quality RF tuners within cable modem package manufactured within the meters. Communications errors were particularly high for early meter populations with failure rates of up to ten percent (10%) following initial installation. This resulted in several follow-on site visits by both metering and communications staff to troubleshoot problems which usually involved replacing the meter outright. Read failures, which began to appear approximately four years into the pilot program and have continued to grow, are usually caused by a failure in the circuitry that provides power to the display within the meter. The result of this failure is that the meter no longer functions to measure electrical consumption. Remote disconnect failures are most often caused by a failure of a capacitor within the switch circuitry which prevents the full operation of the switch. Switch failures can also result from problems within the cryptologic code used to encode switching commands sent to the meter.

Communications and read failures create problems for account billing due to missing consumption data. When consumption data is missing, it must be estimated which could erode confidence customers have about the accuracy of electric billing. To correct data issues, staff from multiple sections within the utility are required to troubleshoot problems resulting in higher operating costs in sustaining the remaining population of Gateway meters.

DRAFT

Communications and switch failures create problems where the electrical service cannot be restored or is left inappropriately energized (to either a delinquent account or to a vacated residence). Both cases result in higher operating costs resulting from unbilled delivery of power or the need to send utility crews to the residence to troubleshoot and/or replace the meter. Recent meter failure rates have averaged around one hundred (100) meters per month. Failures that occur at non pre-payment account customer residences are corrected by removing the Gateway pilot meter and installing a normal manually read meter. Because of the high failure rates and the impacts to metering, communications, and customer services resources required to respond to failures, along with the fact that alternative suppliers of coax wired smart meters are nonexistent; a coordinated effort has been made recently to convert remaining Gateway pilot meters to function as manually read meters within the utility's billing system. Currently the utility is converting approximately one hundred (100) meters per week utilizing a mostly manual process. A method is being developed to automate the conversion process to increase the rate of conversion.

Ending the Gateway metering pilot removes the risk that a computing systems hardware failure could result in impacts to customers due to the inability to read meters or remotely connect services.

The computing systems and software required to support reading meters are beyond end of life. The original server equipment installed to support reading the meters was installed in 2003, the majority of the system continues to run on this legacy hardware due to technical limitations in the custom developed meter reading software. Because of the age of the equipment and unavailability of warrantied replacement equipment on the market, when hardware failures occur, Tacoma Power has to rely on alternative sourcing strategies to find replacement parts which are generally provided as previously used parts sold without warranty.

Ending the Gateway metering pilot removes the risk that a cybersecurity incident within the metering systems could impact customers due to the inability to read meters or remotely connect service. This also removes a potential risk to other computing systems at the city of Tacoma.

The Meter Control System (MCS) software which is used to send commands to the meters to acquire reads and operate the remote disconnect switch in the meter collar was developed internally within Tacoma Power. The highly customized code was written by a former employee utilizing a non-standard programming language and there are no current employees of Tacoma Power with any experience coding applications with this language. The code was written as a 32-bit Microsoft Windows application which utilizes several low level memory mapping techniques which have prevented the application from being successfully operated on modern operating systems and hardware. As a result, Tacoma Power has had to expend significant effort to maintain the operation of legacy software and operating systems with known cybersecurity vulnerabilities. Most of the cybersecurity vulnerabilities identified in these systems have been previously published in the public domain including documented exploitation code and tactics. This potentially presents a large cybersecurity risk not only to Gateway metering pilot systems, but to other systems at the City of Tacoma.

Ending the Gateway metering pilot removes the risk that the host name resolution service could be utilized to potentially identify the actual physical address of Gateway metering endpoints or other proprietary customer information.

DRAFT

In 2017, Click! employees made modifications to the configuration of the host name resolution service used to identify the network address of all endpoints on the network including all broadband customers and the Gateway metering devices. The configuration change was made to protect customer privacy when it was discovered that the prior hostname addressing scheme could allow the identification of the actual physical address of an endpoint device. The configuration change could not be applied to the Gateway metering endpoints since this methodology was central to how the Meter Control System software operated.

Ending the Gateway metering pilot is considered a dependent task in preparation for the deployment of new advanced meters per the TPU Advanced Meter Program.

Placing the remaining Gateway meter population on manual read routes directs critical staff time in UTS, T&D Meter Relay, and Customer Services from sustaining obsolete Gateway meters to critical deployment planning as part of the Advanced Meter Program. The program recognizes the need to continue to sustain the 180 or so customers on the existing pre-pay payment program and is committed to exploring methods to bridge the gap between the end of the Gateway meter pilot and the deployment of a new advanced meter for this specific customer population and will evaluate options / recommendations.

Proposed Timeline.

Over the course of the next three months beginning July 15, 2019, T&D Meter Relay and Customer Services will coordinate efforts to place the remaining Gateway meter population on a manual read route. Absent any unforeseen events, the Gateway pilot will terminate on August 31, 2019.

DRAFT

CERTIFICATE OF SERVICE

I, Thomas McCarthy, certify under penalty of perjury under the laws of the State of Washington, that on the 31st day of January 2023, I caused a true and correct copy of the foregoing document to be served on the following parties:

[x] By E-Filing

Robert L. Christie, Esq. bob@christielawgroup.com

Stuart A. Cassel, Esq. stu@christielawgroup.com
CHRISTIE LAW GROUP, PLLC
2100 Westlake Ave. N., Ste. 206
Seattle, WA 98109

Christopher D. Bacha cbacha@cityoftacoma.org
Office of the City Attorney
3628 South 35th Street
Tacoma, WA 98409

Kenneth W. Masters, Esq. ken@appeal-law.com

Shelby R. Frost Lemmel shelby@appeal-law.com
MASTERS LAW GROUP, P.L.L.C.
321 High School Road NE, D-3
Bainbridge Island, WA 98110

[x] By E-Filing

Thomas McCarthy
801 S. Cushman Ave.
tmccarthy253@gmail.com
Tacoma, WA 98405

DATED this 30 day of January 2023, in Tacoma, Washington.

THOMAS MCCARTHY - FILING PRO SE

January 31, 2023 - 9:10 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	57246-0
Appellate Court Case Title:	Thomas McCarthy, et al, Appellants v. City of Tacoma, Respondent
Superior Court Case Number:	19-2-07135-0

The following documents have been uploaded:

- 572460_Briefs_20230131090940D2793318_3082.pdf
  This File Contains:
  Briefs - Petitioners
  The Original File Name was 2023.1.30 McCarthy Opening Brief FINAL -With Signature.pdf

A copy of the uploaded files will be sent to:

- Stefanie@christielawgroup.com
- Stu@christielawgroup.com
- bob@christielawgroup.com
- cbacha@cityoftacoma.org
- gcastro@cityoftacoma.org
- jpg@grifolaw.com
- ken@appeal-law.com
- office@appeal-law.com
- shelby@appeal-law.com

Comments:

Sender Name: Thomas McCarthy - Email: tmccarthy253@gmail.com
Address:
PO Box 5673
Tacoma, WA, 98405
Phone: (253) 250-9290

Note: The Filing Id is 20230131090940D2793318