

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: M.T.S./TELECOMMUNICATIONS
Urgent _____ Routine X
CEO Concurs with Recommendation YES X NO _____
(Information Attached)

BOARD AGENDA # *B-5
AGENDA DATE February 6, 2001
4/5 Vote Required YES _____ NO _____

SUBJECT:

APPROVE THE TRANSFER OF THE FRANCHISE AGREEMENT BETWEEN STANISLAUS County AND CABLE ONE, INC. FROM CABLE ONE (AKA POST NEWSWEEK CABLE) TO A SUBSIDIARY OF AT&T CORP., WESTMARC DEVELOPMENT JOINT VENTURE (AT&T).

STAFF
RECOMMEN-
DATIONS:

1. APPROVE THE TRANSFER OF THE CABLE ONE, INC. CABLE TELEVISION FRANCHISE WITH THE County OF STANISLAUS TO WESTMARC DEVELOPMENT JOINT VENTURE (AT&T) EFFECTIVE February 6, 2001.
2. APPROVE INDEMNIFICATION AGREEMENT WITH CABLE ONE, INC.

FISCAL
IMPACT:

As stated in the December 19, 2000, agenda item requesting an extension of the Cable One Inc. franchise transfer, \$800,000.00 was identified as an estimated cost for the potential damage to the telephone equipment that is located at Tenth Street Place as a result of a water leak caused by Cable One. This exposure has been reduced by Cable One, Inc. providing a substitute warranty and an indemnification agreement.

BOARD ACTION

No. 2001-84

On motion of Supervisor Caruso, Seconded by Supervisor Blom,
and approved by the following vote,
Ayes: Supervisors: Blom, Simon, Caruso, and Chair Paul
Noes: Supervisors: None
Excused or Absent: Supervisors: Mayfield
Abstaining: Supervisor: None
1) X Approved as recommended
2) _____ Denied
3) _____ Approved as amended
Motion:

Christine Ferraro

File No.

APPROVE THE TRANSFER OF THE FRANCHISE AGREEMENT BETWEEN STANISLAUS County AND CABLE ONE, INC. FROM CABLE ONE (AKA POST NEWSWEEK CABLE) TO A SUBSIDIARY OF AT&T CORP., WESTMARC DEVELOPMENT JOINT VENTURE (AT&T).

PAGE TWO

DISCUSSION: Cable One, Inc. currently provides cable television services to residents of Stanislaus County under a franchise agreement with the County. Under Federal Communications Commission rules, assignment or transfer of ownership of television systems within a jurisdiction must be approved by the franchising authority before a change can occur. Requests for transfer are made through submittal of FCC Form 394 to the franchising authority. If the request is neither denied nor delayed within 120 days of receipt, the transfer of ownership and franchise are deemed to be approved.

The County received such a request from Cable One on August 23, 2000. On December 19, 2000, at the recommendation of staff, the Board approved a sixty day delay to the transfer. The basis for the recommended delay was because of the potential harm that may have been done to telephone equipment located in the 10th Street basement as a result of a leak caused by Cable One. Cable One had already reimbursed the Joint Powers Agency for Tenth Street Place \$10,402.89 to cover the replacement of some equipment that was water damaged. Other equipment was exposed and there is the potential for this equipment to fail in the future. Because of the exposure to water, it was doubtful that the remaining two years of a three-year warranty would be honored.

The Joint Powers Agency for Tenth Street Place contracted with NEC Corporation engineers, manufacturer of most of the equipment, to inspect it. The results were inconclusive with NEC indicating that there was no visible sign of water damage and that there were no records of the level of humidity exposure. Beyond this, NEC would not comment on what the potential was for future problems with the equipment.

Cable One, Inc. subsequently agreed to

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PAGE 3

provide a substitute warranty and indemnification agreement which will replace the original and provide warranty protection to the equipment for the remainder of the life of the voided agreements. The original service arrangement entailed two separate agreements. The first year was covered under a manufacturer's warranty that included parts and labor. The second year was covered under a maintenance agreement with Evans Communications that also covered parts and labor. Cable One, Inc. will provide a replacement to the original warranties with a new effective period of June 1, 2000 through May 31, 2002. In addition, for the period commencing June 1, 2002, through and May 31, 2012, Cable One, Inc. will provide an indemnification against losses to the telecommunications equipment resulting from its original exposure to moisture on or about May, 2000 when the leak occurred.

POLICY ISSUE: Approval of this recommendation will allow for the implementation of the new replacement warranty and the completion of the franchise transfer and is consistent with the Board's priority of efficient government operations.

STAFFING IMPACT: None.

**AGREEMENT
OF THE CITY OF MODESTO AND
STANISLAUS COUNTY JOINT POWERS AUTHORITY
AND CABLE ONE, INC.**

I. INTRODUCTION AND RECITAL OF FACTS:

1. This Indemnification Agreement is made and entered into by and between the City of Modesto and Stanislaus County Joint Powers Authority (the JPA herein), and CABLE ONE, INC. (CABLE ONE herein). Based upon the recital of facts set forth below and pursuant to the negotiation of the parties hereto, this Agreement is intended by the parties to and shall become effective retroactively on June 1, 2000.

2. Whereas the JPA constructed a new City and County Administration Building, located at 1010 Tenth Street, Modesto, County of Stanislaus, California (the JPA Building herein); and

3. Whereas the JPA contracted with Evans Communication, Inc. (Evans herein), for the purchase and installation of a telecommunications system for the JPA Building; and

4. Whereas pursuant to a contract with the JPA, Evans acquired and installed telecommunications equipment in the JPA Building, including, but not limited to, the equipment set forth on Exhibit A of this Agreement and including a "NEC NEAX 2400 IMS (Integrated Multimedia eXchange)" "PBX" system manufactured by NEC of America (collectively referred to as the Telecommunications Equipment herein); and

5. Whereas on or about the month of May in the year 2000, rainwater entered into the telecommunications room of the JPA Building through a conduit which had been installed by or on behalf of CABLE ONE into said telecommunications room and said

rainwater was the cause of damage to or contributed to the damage of and may in the future cause further damage to the Telecommunications Equipment, the "Conduit Leak" hereinafter; and

6. Whereas CABLE ONE is engaged in negotiations with AT&T whereby Westmarc Development Joint Venture (AT&T), a subsidiary of AT&T, is to acquire the cable television system currently operated by CABLE ONE in the unincorporated territory of the County of Stanislaus and United Cable Television Corporation (AT&T), a subsidiary of AT&T, is to acquire the cable television system currently operated by CABLE ONE in the City of Modesto; and they are to acquire through transfers the cable television franchises associated with said governmental entities; and

7. Whereas at the time the rainwater entered into the JPA Building's telecommunications room the JPA had two years of warranty and/or an extended service plan on the Telecommunications Equipment pursuant to the JPA's agreement with Evans and Evans agreement with NEC of America; and

8. Whereas Evans has advised the JPA that the warranty and extended service plan was voided by the entry of water from the conduit installed by or on behalf of CABLE ONE into the telecommunications room of the JPA Building and the exposure of the Telecommunications Equipment to water and/or water vapor; and

9. Whereas the parties to this Agreement wish to memorialize the mutual understanding of the parties to return the JPA to the position which it held with regard to the warranties and extended service plan it had concerning the Telecommunications Equipment in the JPA Building prior to the entry of rainwater through a conduit installed by

or on behalf of CABLE ONE into the telecommunications room of the JPA Building in or about May of the year 2000 referred to hereinabove.

II. THEREFORE, in recognition of the introduction and recital of facts set forth above and which are part of this Agreement, the parties mutually promise and agree to perform as follows:

1. CABLE ONE agrees that it shall indemnify the JPA against any and all costs and expenses actually and reasonably incurred by the JPA in connection with the repair or replacement (with functionally equivalent equipment) of any of the Telecommunications Equipment that is reasonably determined by a qualified expert to have been damaged by the Conduit Leak, provided that any claim by JPA for such indemnification by CABLE ONE must be made prior to 12:00 midnight on May 31, 2012, it being further agreed that the parties shall submit any dispute arising from this section to binding arbitration pursuant to the rules of the American Arbitration Association in effect at the time of an arbitration.

2. In addition, CABLE ONE agrees that it shall from the retroactive commencement date of this Agreement on June 1, 2000, and through and including 12:00 midnight on May 31, 2002, indemnify the JPA against any and all costs and expenses incurred by the JPA in connection with the repair or replacement (with functionally equivalent equipment) of any of the Telecommunications Equipment that fails to function or was or is damaged by any incident including the Conduit Leak, but excluding damage caused by the JPA's or a third party's negligence or willful misconduct, provided that the incident causing such damage must have occurred prior to 12:00 midnight on May 31, 2002, and provided that the JPA notifies CABLE ONE promptly in writing of any

such incident or damage, it being further agreed that the parties shall submit any dispute arising from this section to binding arbitration pursuant to the rules of the American Arbitration Association in effect at the time of an arbitration.

3. The City of Modesto, by the adoption of a resolution approving the cable television franchise transfer from CABLE ONE to United Cable Television Corporation (AT&T), a subsidiary of AT&T, shall be deemed to be approval of the City of Modesto, as a member of the JPA, to this agreement.

4. The County of Stanislaus, by the adoption of a resolution approving the cable television franchise transfer from CABLE ONE to Westmarc Development Joint Venture (AT&T), a subsidiary of AT&T, shall include approval of the County of Stanislaus, as a member of the JPA, to this agreement.

5. The JPA, the City of Modesto and the County of Stanislaus, and each of them, as and for consideration of the promises of indemnification by CABLE ONE set forth herein, agree that the rights set forth in Sections 1 and 2 of Part II of this Agreement shall be each such party's sole and exclusive remedies against CABLE ONE for any claims relating to any damage to any of the Telecommunications Equipment and that they, alone or in combination, will not bring an action in law or equity against CABLE ONE for any losses relating to the Telecommunication Equipment or the Conduit Leak except to enforce CABLE ONE's indemnification obligations arising pursuant to Sections 1 and 2 of Part II of this Agreement.

6. This Agreement shall inure to the benefit of and be a binding contract on the successors or assigns of any and all parties to this Agreement.

**CITY OF MODESTO AND COUNTY OF STANISLAUS
JOINT POWERS AUTHORITY**

Patty Hill-Thomas, Executive Officer

COUNTY OF STANISLAUS

By _____
Reagan M. Wilson
Chief Executive Officer

APPROVED AS TO FORM:



Dean Wright
Deputy County Counsel

CITY OF MODESTO

By _____

APPROVED AS TO FORM:

Michael Milich, City Attorney
For the City of Modesto

CABLE ONE, INC.

By an officer of said corporation
Authorized to bind said corporation
to the terms of this Agreement

V:\CO_ADMIN\WP\KREIDER\DEAN\AGREEMEN\Cable One - PBX.wpd

EXHIBIT 'A'

DATE: January 4, 2001

TO: Donna Hansen
Mary Coelho
City of Modesto
City Managers Office

FROM: Trudy Gagon
Evans Companies
Voice #394-0259
FAX #394-0359

RE: Telephone Equipment

Below is a recap of the dollar amount of the equipment in question installed at 1010-10th Street by Evans Communications:

This amount represents the initial contract along with additional cards added to the PBX. This amount does not include any telephones that were installed as they are not in any jeopardy.

INITIAL INVOICE #147520:	Equipment = \$386,374.00
NEAX 2400 PBX	Labor = \$158,000.00

INVOICE #147519:	Equipment = \$ 59,502.15
AVT 32 Port Voice mail System*	Labor = \$ 16,720.00

INVOICE #152732, #146794, #147441 #151253	Equipment = \$ 18,271.00
Additional Cards & Equipment	Labor = \$ 740.00

*Please note the City of Modesto moved the existing 16 port of voice mail from old City Hall into this new system making it a 48 port voice mail system for the JPA – the price of the original 16 ports is not in the above pricing.

At the time of the sale, the system was under a two-year warranty that would have expired 12/2001 with Evans Communications. When this accident occurred we sent a letter stating that under the circumstances, this warranty would no longer cover any of the equipment in the common equipment room. All telephones installed at that time are still under the original warranty. The manufacturers warranty was good for one year.



BROADBAND

BOARD OF SUPERVISORS

2001 MAR 12 P 3:26

March 9, 2001

Here is the Certificate of Insurance required for the Cable Television Franchise which was recently transferred to WestMarc Development Joint Venture, 1/k/a AT&T Broadband.

If you have any questions, please give me a call at (209) 474-1747 x207.

Pat Rice
Executive Administrator