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# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
2006-0255	Communication	In Committee
	Time Warner Cable communication regarding AT&T-SBC's plan to offer video services.	
	Introduced: 5/2/2006	Controlling Body: License & Health Committee

## COMMITTEE RECOMMENDATION

*Pof*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>5-2-06</u>	<input checked="" type="checkbox"/>		Barczak	<input checked="" type="checkbox"/>			
			Czaplewski	<input checked="" type="checkbox"/>			
			Dobrowski	<input checked="" type="checkbox"/>			
			Kopplin	<input checked="" type="checkbox"/>			
			Lajsic				
		<input checked="" type="checkbox"/>	Narlock	<input checked="" type="checkbox"/>			
			Reinke				
			Sengstock	<input checked="" type="checkbox"/>			
			Vitale				
			Weigel				
			TOTAL	<u>5</u>	<u>-</u>		

## SIGNATURE OF COMMITTEE MEMBER

*Kurt Kopplin* \_\_\_\_\_  
 Chair Vice-Chair Member

## COMMON COUNCIL ACTION place on file

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>5-2-06</u>	<input checked="" type="checkbox"/>		Barczak				
			Czaplewski				
			Dobrowski				
			Kopplin				
			Lajsic				
		<input checked="" type="checkbox"/>	Narlock				
			Reinke				
			Sengstock				
			Vitale				
			Weigel				
			TOTAL				

*unanimous*

1320 N. Dr. Martin Luther King, Jr. Drive  
Milwaukee, WI 53212-4002  
Tel 414-277-4190  
Fax 414-908-0327  
bev.greenberg@twcable.com

Bev Greenberg  
Vice President  
Public Affairs



April 19, 2006

Mayor Jeannette Bell  
City of West Allis  
7525 W. Greenfield Ave.  
West Allis, WI 53214

Dear Mayor Bell:

As you know, Time Warner Cable has historically provided our communities with as much information as possible to keep you informed and updated on new products and services as well as any issues regarding cable television.

On March 8<sup>th</sup> I sent you a letter regarding Time Warner Cable's position on AT&T's claim that their video service is not a "cable service", and how Time Warner Cable supports a competitive marketplace but wants to ensure that like services operate within a "level playing field".

We know that representatives from AT&T – SBC continue to meet with communities throughout Wisconsin to inform them of AT&T's plan to offer video services and their ongoing claim that their video service is not a "cable service"; and therefore will not be seeking a local franchise with Wisconsin communities.

I am including a Memorandum prepared by Paul, Weiss, Rifkind, Wharton & Garrison LLP, that outlines why AT&T's argument is baseless. As a local franchise authority you might remind AT&T that all of Time Warner Cable's franchise agreements are **non-exclusive**. AT&T has always had the opportunity to offer cable television services to your community. All of the communities we serve have the ability to award additional franchises as we have a **non-exclusive** contract.

Once again, Time Warner Cable supports a competitive marketplace. However, in order to have true competition, all like services must be able to operate within a level playing field. I will continue to keep you updated on all issues. If you would like to discuss this letter or anything relating to Time Warner Cable, please do not hesitate to call me at 414-277-4190.

Sincerely,

A handwritten signature in cursive script that reads 'Bev Greenberg'.

Bev Greenberg  
Vice President, Public Affairs

RECEIVED

APR 25 2006

CITY OF WEST ALLIS  
CLERK/TREASURER

OFFICE OF THE MAYOR  
RECEIVED

APR 25 2006

WEST ALLIS, WI

April 14, 2006

MEMORANDUM

**Project Lightspeed and Local Franchises**

Under federal law, “a cable operator may not provide cable service without a franchise.”<sup>1</sup> AT&T has argued, however, that, when it launches its Project Lightspeed, it will be neither a “cable operator” nor providing a “cable service.” AT&T’s arguments are baseless and in any event would not have the desired result.

**1. AT&T’s Arguments Are Baseless.**

“Cable Service” — The Communications Act defines “cable service” as “(A) the *one-way* transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.”<sup>2</sup> According to AT&T, its service is not one-way but two-way. That is so, AT&T says, because its network sends subscribers only the programming that they request — unlike traditional cable systems, which send subscribers all available programming and rely on set-top boxes to select the programming the subscriber can watch.

But, even if Project Lightspeed works the way AT&T describes it, the “transmission to subscribers of . . . video programming” is still only “one-way”: from AT&T’s network to the subscriber. It may well be that there will be two-way communication — in that the subscriber returns impulses to call up particular programming. But those impulses are “subscriber interaction . . . required for the selection or use of . . . video programming.” To fall outside the definition, there would have to be two-way transmissions of video (as in video telephony). Otherwise, the “interactive on-demand” exception, discussed below, would be superfluous.

“Cable System.” — The Communications Act defines “cable operator” as a person operating a “cable system.”<sup>3</sup> That term in turn is defined as “a facility . . . that is designed to provide cable service,”<sup>4</sup> but there is an exception for “a facility of a common carrier which is . . . used . . . solely to provide interactive on-demand services.”<sup>5</sup> “[T]he term ‘interactive on-demand services’ means a service providing video programming to subscribers over switched networks on an on-demand, point-to-

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<sup>1</sup> 47 U.S.C. § 541(b)(1).

<sup>2</sup> *Id.* § 522(6) (emphasis added).

<sup>3</sup> *Id.* § 522(5).

<sup>4</sup> *Id.* § 522(7).

<sup>5</sup> *Id.* § 522(7)(C).

point basis, but does not include services providing video programming prescheduled by the programming provider.”<sup>6</sup> According to AT&T, its programming will be “interactive on-demand” because it will be visible only to subscribers who specifically request it.

But, as AT&T has described it, it plans to provide a video service that, to the consumer, is indistinguishable from traditional cable service. The only difference is that the subscriber’s remote requests programming from the head-end instead of from the set-top box. That is not enough: “interactive on-demand services . . . does not include services providing video programming prescheduled by the programming provider.” A service that a subscriber is able to watch only at the time selected by the video-programming service is “prescheduled by the programming provider.”

## 2. AT&T’s Arguments Would Not Yield the Desired Result.

AT&T’s arguments in any event cannot free it from the requirement that it obtain a franchise. *First*, in 1996, Congress replaced a prohibition on video service by telephone companies with a requirement that telephone companies providing video programming abide by all requirements imposed on cable operators: “[t]o the extent that a common carrier is providing video programming to its subscribers in any manner . . . , such carrier shall be subject to the requirements of [Title VI of the Communications Act].”<sup>7</sup> AT&T is a “common carrier,” and Title VI includes the requirement to obtain a cable franchise.

*Second*, even if AT&T’s arguments were successful, that would mean only that there is no franchise requirement under federal law. If state law makes it unlawful to provide video service without a franchise, a provider must still abide by the state law requirement.<sup>8</sup> Because applicable law provides that firms wishing to provide video service in this State must obtain a cable franchise,<sup>9</sup> it does not matter whether there is a federal requirement.

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<sup>6</sup> *Id.* § 522(12).

<sup>7</sup> *Id.* § 571(a)(3)(A).

<sup>8</sup> See *City of Dallas v. FCC*, 165 F.3d 341, 347 (5th Cir. 1999); *Pacific Bell Tel. Co. v. City of Walnut Creek*, No. C-05-4723 MMC, at 10 (N.D. Cal. Apr. 13, 2006).

<sup>9</sup> See Wis. Stat. § 66.0419(3)(b) (“A municipality may . . . [g]rant or revoke one or more franchises authorizing the construction and operation of a cable television system and govern the operation of any franchise granted.”).



# CITY OF WEST ALLIS

WISCONSIN

OFFICE OF THE CITY ATTORNEY



City Attorney  
**Scott E. Post**

Assistant City Attorneys  
**Sheryl L. Kuhary**  
**Jeffrey J. Warchol**  
**Cheryl L. Wentland**

May 4, 2006

**CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

Nicholas D. Itsines Jr.  
Pallas Restaurant  
1657 South 108<sup>th</sup> St.  
West Allis, WI 53214

RE: Alcohol Beverage License

Dear Mr. Itsines:

Please be advised that the Class B Liquor License issued to the Pallas Restaurant effective July 1<sup>st</sup>, 2005, does not include the premise of the Days Inn. Therefore, you must **CEASE AND DESIST** from serving alcohol to any person on the Days Inn premise. Should the Days Inn choose to serve alcohol anywhere on their premises, they must apply for and be granted a Class B Liquor License for this purpose.

Your prompt and continued cooperation is anticipated.

Very truly yours,

Cheryl L. Wentland  
Assistant City Attorney

CLW:kp  
L:\Cheryl\MiscLtrs\ItsinesCorp.Pallas.DaysInn

cc: Monica Schultz, Asst. City Clerk  
Kurt Kopplin, Chair, License & Health Comm.  
Ted Atkinson, Director, Building Insp. & Zoning  
Nicholas Itsines, Sr., Days Inn