

**CITY OF WASILLA
RESOLUTION SERIAL NO. 11- 34**

A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MATANUSKA TELEPHONE ASSOCIATION, INC. EXTENDING TO 2014 A SETTLEMENT OF CLAIMS RELATED TO THE PAYMENT OF TELEPHONE COOPERATIVE GROSS RECEIPTS TAX TO THE CITY.

WHEREAS, under AS 10.25.540 and 10.25.550, the state levies an annual tax of 2 percent of gross revenue on telephone cooperatives, including Matanuska Telephone Association, Inc. ("MTA"); and

WHEREAS, this tax is levied in lieu of other state and local taxes, and under AS 10.25.570, the proceeds of the tax, less the amount expended by the state in collecting the tax, are refunded to the City in the proportion that MTA's gross revenue was earned within the City; and

WHEREAS, In 2002, representatives of the City of Wasilla, the State of Alaska, other municipalities and MTA negotiated an agreement ("Agreement") regarding a method for determining what categories of MTA's revenue would be subject to tax in tax years through 2006, and the City approved the Agreement; and

WHEREAS, the parties now have negotiated an extension of the Agreement though the 2014 tax year ("Extension"), which now is before this meeting.

NOW, THEREFORE, BE IT ENACTED:

* **Section 1.** The City Council finds that the Agreement provides certainty as to the method for computing MTA's gross revenue tax in the 2007 through 2014 tax years, and the Extension, therefore, is in the best interest of the City.

* **Section 2.** The form and content of the Extension hereby are in all respects authorized, approved and confirmed, and the Mayor hereby is authorized, empowered and directed to execute and deliver to the counterparties the Extension on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as shall to him seem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of

approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the Mayor hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Extension as executed.

* **Section 3. Effective date.** This resolution shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council, Alaska, on September 12, 2011.


VERNE RUPRIGHT, Mayor

ATTEST:


KRISTIE L. SMITHERS, MMC, City Clerk

[SEAL]

VOTE: Harris, Holler, Katkus, Menard, and Woodruff in favor; Sullivan-Leonard absent.



**CITY OF WASILLA
LEGISLATION STAFF REPORT**

Resolution Serial No. 11-34: A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MATANUSKA TELEPHONE ASSOCIATION, INC. EXTENDING TO 2014 A SETTLEMENT OF CLAIMS RELATED TO THE PAYMENT OF TELEPHONE COOPERATIVE GROSS RECEIPTS TAX TO THE CITY.

Agenda of: September 12, 2011
Originator: Administration

Date: August 26, 2011

Route to:	Department	Signature/Date
	Director of Public Works	
X	Finance Director	<i>[Signature]</i> 8/30/11
X	Interim Deputy Administrator	<i>[Signature]</i> 9-1-11
X	City Clerk	<i>[Signature]</i>

REVIEWED BY MAYOR VERNE E. RUPRIGHT: *[Signature]*

FISCAL IMPACT: yes or no Funds Available yes no

Account name/number: 001-0000-335.81-00 Electric & Tele. Coop Tax
Attachments: 1) Letter from Thomas F. Klinkner, Birch, Horton, Bittner and Cherot.
2) Resolution No. 02-20.

SUMMARY STATEMENT:

Attached is a letter from Thomas Klinkner, Horton, Bittner and Cherot. This letter outlines the details and transition of events that have occurred since the year 2000 "in which a dispute arose between Matanuska Telephone Association, Inc. ("MTA") and the State Department of Revenue over which categories of MTA's revenues were subject to the telephone cooperative tax" and passage of Resolution 02-20 on July 22, 2002.

This resolution is an extension of the Agreement though the 2014 tax year.

STAFF RECOMMENDATION: Approve the adoption of Resolution 11-34.

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

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May 14, 2009

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

via EMAIL ONLY

Mayor Verne Rupright
City of Wasilla
290 West Herning Avenue
Wasilla, Alaska 99564

RE: Settlement Agreement with Matanuska Telephone Association, Inc.
Our File No. 505,780.124

Dear Verne:

In the near future, the City will be presented with an amendment to the settlement agreement referred to above, so I am writing to provide some background on this subject.

The amendment is the sequel to a dispute that arose when Sarah Palin was mayor. Under AS 10.25.540(b)(1) and 10.25.550(2), the state levies an annual tax of 2% of gross revenue on telephone cooperatives. The state levies this tax in lieu of other state and local taxes, including sales and real property taxes. Under AS 10.25.570, the proceeds of this telephone cooperative tax, less the amount expended by the state in collecting the tax, are refunded to a municipality in proportion to the part of the telephone cooperative's gross revenue that was earned within the municipality.

In 2000, a dispute arose between Matanuska Telephone Association, Inc. ("MTA") and the State Department of Revenue over which categories of MTA's revenues were subject to the telephone cooperative tax. MTA asserted that only revenue from local and long distance telephone service was subject to the tax. The State and the municipalities within MTA's service area, including the City, claimed that all of MTA's revenues were subject to the tax. The revenue categories that were in dispute included telephone directory revenues, investment income, and money paid to

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MTA as a provider of service in rural areas from a universal service fund ("USF"). The USF was established by utility regulators for the purpose of compensating telephone utilities for the high cost of serving rural customers, while reducing the rural customers' rates. USF payments to MTA had increased substantially since Congress adopted the 1996 Telecommunications Act.

In 2002, MTA, the State, and the municipalities within the MTA service area, including the City, negotiated a settlement of this dispute. The Agreement consisted of two parts. The first part addressed MTA's tax liability for the years 1992 through 2001, the last year for which tax returns then had been filed. The second part, which is of concern here, addressed what categories of MTA revenues would be subject to the gross receipts tax in the 2002 through 2006 tax years. The second part of the agreement consisted of two documents: a Non-binding Letter of Understanding ("LOU") between MTA and the State Department of Revenue, and a Settlement Agreement and Release among MTA and the municipalities in its service area. Appended to the LOU, and attached to this letter, is a schedule showing categories of MTA revenues and the tax treatment of each.

One of the features of the settlement was a "phase-out" over three years of the taxation of one part of MTA's USF revenues, known as USF-high cost support (USF-HCS). MTA agreed to pay the tax on 100% of its USF-HCS revenues in 2002; on 50% of USF-HCS revenues in 2003; and on 33% of USF-HCS revenues in 2004; with no tax being payable on USF-HCS revenues thereafter.

The settlement agreement also provided that the parties could agree to extend the settlement agreement to cover 2007 and subsequent years. The parties to the settlement agreement met in late 2007 and early 2008 to discuss extension of the settlement agreement. An impasse developed over whether the settlement agreement's exclusion of USF-HCS revenues from taxation would continue. Negotiators for MTA and the municipalities¹ now have reached a compromise of this issue: MTA will not pay tax on USF-HCS revenues for 2007, but will be taxed on 30% of USF-HCS revenues through 2014, the last year to which the extension of the settlement agreement would apply.

MTA has projected receiving about \$12 million in USF-HCS payments in each year from 2007 through 2012. Applying the 2% gross receipts tax to \$12 million yields \$240,000. The City's share of this amount would be \$40,800, based on the 17% of MTA revenue that was earned in the City in 2006. Under the proposed settlement

¹ In the interest of economy and presenting a unified position, the municipalities selected Walker & Levesque, who represented the Matanuska-Susitna Borough, to represent all of them in negotiations with MTA and the State.

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agreement the City's annual receipts from the tax on 30% of MTA's USF-HCS revenues would be approximately \$12,240.

The significance of the telephone cooperative tax to the City's finances has diminished since 2002, because the market for telephone service in the Valley has been opened to competition. As MTA loses market share to competitors that are not cooperatives subject to the state telephone cooperative tax, the City's receipts from that tax will diminish. However, because the state tax statute shields only cooperatives from local taxation, the City should realize a corresponding increase in sales tax revenue from other telephone companies that have customers in the City.

A significant factor supporting the extension of the settlement agreement is the way in which the tax is collected. The City does not collect the tax – it is collected by the State Department of Revenue. Because the State passes the tax receipts, less the cost of collection, through to the municipalities, it doesn't have much incentive to fight with MTA over the amount of revenue that it reports. The settlement agreement thus provides the City with certainty regarding issues on which it otherwise would have only an indirect voice.

Please let me know if you have questions concerning this matter.

Sincerely,

BIRCH, HORTON, BITTNER and CHEROT


Thomas F. Klinkner

Enclosure

Prepared by: Attorney
Requested by: Administration
Introduced: July 22 2002
Adopted: July 22, 2002
Vote: Unanimous; Sullivan-Leonard and O'Neill absent

**CITY OF WASILLA
RESOLUTION SERIAL NO. 02-20**

A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MATANUSKA TELEPHONE ASSOCIATION, INC. SETTLING CLAIMS RELATED TO THE PAYMENT OF TELEPHONE COOPERATIVE GROSS RECEIPTS TAX TO THE CITY.

WHEREAS, under AS 10.25.540 and 10.25.550, the state levies an annual tax of 2% of gross revenue on telephone cooperatives, including Matanuska Telephone Association, Inc. ("MTA"); and

WHEREAS, this tax is levied in lieu of other state and local taxes, and under AS 10.25.570, the proceeds of the tax, less the amount expended by the state in collecting the tax, are refunded to the City in the proportion that MTA's gross revenue was earned within the City; and

WHEREAS, the State Department of Revenue ("State") audited MTA's gross revenue tax returns for the years 1992 through 1997, found that MTA had underreported its gross revenue for those years, and assessed MTA additional tax for those years; and

WHEREAS, MTA requested an administrative hearing on the State's audit and assessment, the State invited municipalities within MTA's service area to intervene in the administrative proceeding, and the City, along with the Matanuska-Susitna Borough, the City of Palmer, and the Municipality of Anchorage, intervened; and

WHEREAS, while the State and the intervening municipalities assert that MTA owes additional tax for the years 1992 through 1997, while MTA asserts that it overpaid the tax for those years, and that it is entitled to a substantial refund; and

WHEREAS, representatives of the City, the State, the other intervening municipalities and MTA have negotiated an agreement ("Agreement"), which has been presented at this meeting, settling their claims for the 1992 through 1997 tax years that were subject to audit, and the 1998 through 2001 tax years for which MTA has filed tax

returns that have not been audited, as well as agreeing upon a method for determining what categories of MTA's revenue will be subject to tax in future tax years; and

WHEREAS, counsel for the City and the other intervening municipalities in the administrative proceeding, and the other intervening municipalities themselves, recommend approval of the Agreement.

NOW, THEREFORE, BE IT ENACTED:

* **Section 1.** The council finds that the Agreement is a reasonable compromise of the parties' claims concerning prior tax years, and provides certainty as to the method for computing MTA's gross revenue tax in future tax years, and therefore is in the best interest of the City.

* **Section 2.** The form and content of the Agreement hereby are in all respects authorized, approved and confirmed, and the Mayor hereby is authorized, empowered and directed to execute and deliver to the counterparties the Agreement on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as shall to her seem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the Mayor hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

* **Section 3. Effective date.** This resolution shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on July 22, 2002.

ATTEST:



KRISTIE SMITHERS, CMC
City Clerk



SARAH PALIN, Mayor

[SEAL]