



July 11, 2011

tw telecom inc.
520 SW 6th Avenue, Suite 400
Portland, OR 97204

VIA Email

Broadband Strategic Plan Leadership Team
c/o Office of Cable Communications & Franchise Management
City Hall
1221 SW 4th Avenue
Portland, OR 97204

Re: Portland Broadband Strategic Plan

Dear members of Portland's Broadband Strategic Plan Leadership Team:

I write on behalf of tw telecom of oregon llc (tw) to recognize the good work that Portland has already done on the Portland Broadband Strategic Plan (the Plan) and to suggest additions to the Plan that would make it more effective in achieving its goals.

Although the Plan remains a work-in-progress, Portland deserves much credit for its efforts. Clearly Portland recognizes the need to prepare for a future in which broadband will play an ever-greater role in the region's economic and cultural vitality. Portland's future success will depend on fostering fair competition among broadband providers that compete for customers with increasing speed, capacity, and service quality at aggressive prices.

tw is uniquely positioned to help Portland with the challenge of preparing for the future of broadband. tw operates an extensive local optical fiber network in the Portland area that is vital to the region's economic growth. Indeed, among competitive providers, tw's fiber network is the largest as measured by the number of commercial buildings that it reaches. In the Portland area, tw provides connectivity to nearly 300 enterprise buildings. tw's fiber-based network provides business customers with a vital alternative to incumbent telephone companies such as CenturyLink. tw not only provides fiber-based physical infrastructure to customers, but also expert management of Quality of Service issues across its entire network. In short, tw is delivering the infrastructure and services that are powering Portland's success today, and thereby has a unique perspective on transforming broadband for Portland's future. tw is happy to share its perspective on that vital transformation.

The draft of the Plan circulated on May 11, 2011 lays out admirable goals. Like any initial draft, however, the Plan is not perfect. Adjustments to the Plan are needed in order to realize the goals it lays out. tw has suggestions concerning three major issues—building entry fees, discriminatory taxes/franchise fees, and proposals for a “dig once” policy. These must be addressed more clearly as the Plan is developed further.

The first major issue concerns the high building entry fees that competitive providers like tw are charged by building owners when installing fiber and equipment in a building. The Plan, as currently drafted, recognizes the desirability of reducing or waiving these fees (see page 22 of

the Plan). However, tw believes these fees deserve greater attention. Lowering these fees would advance two “Key Strategies” in the Plan. One is the Key Strategy for achieving Goal 1 of prioritizing “big pipe” capacity for Portland businesses and other high-capacity users. The other is the Key Strategy of facilitating marketplace competition for broadband, in pursuit of Goal 2.

High building entry fees are barriers to these worthy goals. In many buildings, incumbent providers have equipment and/or a dedicated telecommunications space as a hold-over from the era of monopoly telephone service, dating back before the enactment of the pro-competitive provisions Telecommunications Act of 1996. Occupants of such buildings will only see true competitive pricing on broadband services if would-be competitors can enter the buildings and install equipment at reasonable rates. tw can attest that its own ability to bring competitive service to buildings served by incumbents has been severely hindered by high fees for entering and placing equipment. This effectively denies individual end-user companies the benefit of choosing among multiple providers based on factors like capacity, speed, and service. In sum, the high fees are simply barriers to competition, effectively shackling tenants in a building to the incumbent service provider.

Driving down building entry fees would create opportunities for all broadband providers to compete in providing high-capacity broadband to businesses. Lowering fees would allow free competition that would encourage providers to invest in offering “big pipe” capacity. With more concrete steps on how to use Portland’s influence to lower building entry fees, the Plan would be better able to achieve its goals of promoting competition and “big pipe” capacity. Such steps would also facilitate more private investment that would serve industries that thrive on the very highest broadband speeds, such as those that tw’s fiber-based network is capable of providing.

This brings us to the second major issue, the need to eliminate inequitable tax and franchise fee provisions that favor incumbent providers. Today, CenturyLink and other incumbent providers pay no taxes on revenues from broadband services. In contrast, competitive providers like tw pay the City 5% franchise fees, or Utility License Fees, on gross revenues from broadband services. Why are two providers of broadband services, that compete head-to-head in the Portland market, taxed so differently? The answer is the outdated Oregon privilege tax statute, ORS §221.515. Under that statute, incumbent providers like CenturyLink that use public rights of way are subject to a maximum 7% privilege tax—but only on “exchange access services,” not broadband services. In contrast, the statute allows (but does not require) municipalities to tax competitive providers on all gross revenues—which includes all broadband revenues. Under this scheme, Portland assesses a 5% tax on the broadband revenues of tw and other competitive providers, but does not tax the incumbent’s (CenturyLink) broadband revenues at all.

This unequal taxation is unfair. It is also bad policy because it harms the very marketplace competition that the Plan is designed to promote. Taxing only telephone exchange access services (e.g., voice calling) of the sole provider of service may have made sense under the old monopoly service provider format, but no longer makes sense when those incumbents are

delivering high-speed broadband services in direct competition with companies subject to higher taxes.

One alternative for fixing this situation would be for Portland to simply stop taxing broadband revenues of competitive providers—thus putting competitors on the same footing as the incumbent provider. A commitment to do this would be a welcome addition to the Plan.

In the alternative tw urges the City to commit to work to eliminate the root of the inequity by advocating for reform of the discriminatory privilege tax statute. Not only should the final Plan reflect a commitment to work to reform the discriminatory privilege tax, but Portland should start reaching out to state representatives today—before the Plan is finalized.

The final major issue concerns discussion of a so-called “dig once” policy in the May 11, 2011 draft. Under the heading “World Class Broadband: Experiences from Other Communities,” the current draft indicates that under a “dig once” policy, installation of conduit or fiber would be mandatory any time a company digs a trench in the street. According to the draft, the goal is “cost-effectively” deploying network infrastructure (see page 15 of the Plan). This brief discussion of “dig once” raises many questions that are not answered in the draft Plan. Among these are:

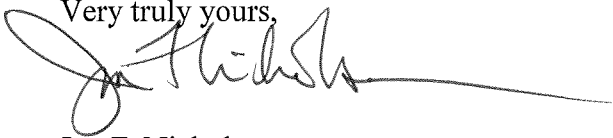
1. Does every trench need conduit/fiber? The type of “dig once” policy described appears to assume that there is a need to install new infrastructure throughout the city—in every open street. There is no reason for that assumption. Upgrades to Portland’s existing network, which already provides basic broadband connectivity to the whole city, should reflect demand for next-generation speeds and “big pipe” capacity, which will vary across different areas of the city. tw and other broadband providers can respond efficiently to demand by deploying additional infrastructure where it is needed. Deploying fiber/conduit everywhere—even where demand is absent—would be inefficient and costly.
2. Who installs the conduit/fiber? Discussion of other cities’ “dig once” policies suggests that the City of Portland itself would do the installation. But this would appear to undermine the goal of cost-effective deployment. There is no reason to believe that City installation would be more efficient than installation by private broadband providers. Competition for such installation work would reduce costs.
3. Who owns the conduit/fiber? The discussion raises the possibility that City-owned conduit will be “leased to the private sector and stimulate the offering of services,” but overlooks the fact that this would place the City in competition with companies that have invested in their own broadband networks, distorting marketplace competition and discouraging further investment by those companies.

4. Who pays for the conduit/fiber? Will the City be funding deployment of conduit/fiber in every open trench in the hope that all such locations can be leased as part of an efficient network? If companies opening the streets pay, will the costs be split with other entities that benefit from the installation? The discussion in the current draft does not resolve the crucial issue of cost sharing.

The questions above must be thoughtfully answered if the intention is to incorporate “dig once” as a Key Strategy in the final Plan. tw’s own view is that direct involvement by the City of Portland in mandating, installing, owning, or paying for conduit/fiber would not be effective in advancing the goals of the Plan. Demand-driven deployment of conduit/fiber by broadband providers with private funds would usher in the future of broadband more cost-effectively.

In closing, the Plan would be greatly improved by (1) strengthening the commitment to reduce building entry fees to promote competition and capacity, (2) promoting competitive neutrality in the broadband market by steps to end discriminatory taxation, and (3) encouraging efficient, demand-driven deployment rather than mandating a “dig once” approach. tw is excited at the prospect of working hand-in-hand with Portland to secure the ambitious goals of the Plan.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jon F. Nicholson", with a long horizontal flourish extending to the right.

Jon F. Nicholson
VP/GM Oregon & SW Washington
tw telecom of oregon llc