MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON JUNE 26, 1998

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Lesly Smith at 9:00 A.M. on Friday, June 26, 1998, in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, Councilman Leslie Shaw, and Councilman Jack McDonald. Absent from the meeting were President Pro-Tem McLendon, and Councilman Allen Wyett. Staff members in attendance were Acting Town Manger Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, and Deputy Town Clerk Susan Eichhorn.

II. APPROVAL OF AGENDA

The Agenda was unanimously approved through motion of Councilman Shaw, seconded by Councilman McDonald.

III. CONSIDERATION OF PROTEST FILED APRIL 30, 1998, BY BELLSOUTH REGARDING THE PROPOSED FRANCHISE FEE AND PUBLIC SERVICE TAX ASSESSED BY THE TOWN OF PALM BEACH (INCLUDING ISSUANCE OF WRITTEN NOTICE OF DECISION)

Town Attorney Randolph stated that the meeting was being held pursuant to Florida Statute 166.234, which were the administrative provisions and rights and remedies relating to the public service tax. An audit of franchise fees and public service taxes assessed by the Town of BellSouth had been conducted. The results of that audit indicate the amounts due for the year 1996, as determined by the Public Resources Management Group, Inc. (PRMG). In determining whether the fees were appropriate, two considerations must be made: 1) Florida Statute 203.012, which defined gross receipts relating to telecommunications services; and 2) to determine whether certain charges were recurring customer service charges, pursuant to statute. He explained that the statute provided that telecommunication service as defined in 203.0125(b) shall be taxed only on monthly recurring customer service charges, excluding variable usage charges.

Mr. Randolph noted that there were four items that the auditors had determined additional fees were due on: Foreign Exchange Directory Listing, Inside Wire Service Plan, Memory Call, and Designer Listing - Additional/Nonpublished/Stylis. In response to these items, PRMG had issued a letter of explanation in justification of its decision. BellSouth no longer contested the amount due under Foreign Exchange Directory Listing, as well as the amounts due under Designer Listing. Therefore, there were two matters still being contested: Inside Wire Service Plan, and Memory Call. Representatives were present from BellSouth that could respond to any questions. Their basic explanation as to why the Town was not entitled to a fee on the Inside Wire Service Plan was contained in their letter of April 30, 1998.

At this time, a conference telephone call was arranged with Garth Ashpaugh, Executive Consultant with PRMG, who would also participate in the meeting.

Mr. James Montgomery, Senior Tax Manager of BellSouth, addressed the Town Council, commenting on the Inside Wire Service Plan, explaining that the inside wire was actually the wire that stopped at the BellSouth demarcation point, and ran into a house, stopping inside the house in the jack where the phone hook-up was placed. BellSouth had divested itself of ownership of inside wire in the 1980's, when the customer then had the option of selecting to maintain the wire themselves, or subscribe to a BellSouth Inside Wire Service Plan. He maintained that the definition for telecommunication services under Florida Statute 203.012 did not include the Inside Wire Service Plan. It was the position of BellSouth that inside wire was not a telecommunication service.

Mr. Ashpaugh responded that the inside wire on a structure was owned by the resident, not by BellSouth. BellSouth was selling a service which was not maintenance–it was not maintenance unless it was used. He maintained that the Inside Wire Service Plan met the recurring nature of the law, and the law read that it would be included, unless specifically excluded. He maintained that the plan met the definition of gross receipts from telecommunication services under Statute 203.012.

Mr. Montgomery replied that telecommunication service was either one-way or two-way phone service. Per the statute: "Gross receipts from telecommunication services includes the gross receipts for all telecom services of whatever nature, including..." and then the Statute went on to give what was considered to be telecom, as well as some exclusions. He noted that literal interpretation of the Statute could not be expanded to include an inside wire service plan, or something that did not fit the meaning of telecommunications. The Statute must be taken literally, and construed strictly; the inside wire plan did not fit into the definition of telecommunication services.

Councilman Shaw commented that as long as the costs for the service ran through the invoice of BellSouth, it should be accepted as part of gross receipts. It was a recurring charge and part of the total bill.

John Robinson, C.P.A., Director-State and Local Tax, BellSouth, addressed the Town Council, stating that the inside wire issue was a municipal utility tax issue, and not a franchise issue. He maintained that it did not meet the definition of telecommunication services in the Florida Statutes, and that the charge was a maintenance charge paid by the customer, and was specifically excluded by the law.

Councilman McDonald asked if this issue had been raised before?

Mr. Robinson replied that the issue had been raised by contract auditors that do audits across the State, and stated that it had not been litigated before, and BellSouth had not paid any taxes on inside wire service.

Town Attorney Randolph advised that he recommended that the Town take the position that it would go back three years for payment, in the event it decided to agree with PRMG.

Mr. Montgomery addressed the Memory Call Issue, stating that memory call was a telephone answering device that BellSouth provided to its customers, if they subscribed to the service. It was a piece of equipment separate from the switching equipment in the central office, and the function it performed was to store messages, allow retrieval, editing, saving, and deleting. Based upon the reading of Florida Statute 203.012(2)5, charges for services or items of equipment supplied by providers of the telecommunication services described in paragraph 5(b) were excluded from the definition of telecommunication services. The opinion of BellSouth was based upon that section of the law; it was non-taxable, and did not fit the definition of telecommunication services. Memory call was actually a portion of the computer system that stored messages, and was no different from having an answering machine in a home.

Mr. Ashpaugh, of PRMG, responded that memory call was a service being provided, and was no different than the other services offered by BellSouth. He had not received any explanation that would make him think differently, and believed that it fell within the category of taxable revenue, as it was a recurring charge.

Councilman McDonald commented that he also believed the Statute should be strictly construed; memory call was not equipment, maintenance, or rental, and that was what the Statute excluded. He did not think the legislature could have possibly conceptualized, at the time, what services BellSouth would offer.

Mr. Montgomery replied that he agreed that the legislature could not have perceived what services could be offered in the future. He advised that he disagreed that the memory call was not equipment, as it actually was rented equipment, which was totally separate from the central office equipment. Florida State and local taxes were applied to the service, as a rental and tangible personal property. BellSouth had been audited by the Department of Revenue in the State of Florida, and they had agreed with the position of BellSouth.

Councilman McDonald moved that the findings of PRMG be accepted, to include authorization of the Mayor to execute a Notice of Decision as well as any like fees within the past three years forward. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

IV. ANY OTHER MATTERS

There were none.

V. ADJOURNMENT

The meeting was adjourned at 9:45 A.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
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