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**AGENDA COVER MEMO**


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AGENDA DATE: 12 October 2005  
 Memorandum Date: 3 October 2005

**TO:** LANE COUNTY BOARD OF COMMISSIONERS

**DEPARTMENT:** ASSESSMENT & TAXATION

**PRESENTED BY:** Jim Gangle, County Assessor

**AGENDA ITEM TITLE:** IN THE MATTER OF APPROVING SETTLEMENT OF THE CRICKET COMMUNICATIONS, INC. (ALSO KNOWN AS LEAP WIRELESS INTERNATIONAL, INC.) AND THE GENUITY INC., TAX CLAIMS IN BANKRUPTCY COURT, AND APPROVING THE CANCELLATION OF TAXES REMAINING ON THE CRICKET/LEAP, GENUITY, AND K-MART AFFECTED ACCOUNTS

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**I. MOTION**

I move approval of the Order in the matter of approving settlement of the Cricket Communications, Inc. (also known as Leap Wireless International, Inc.) and the Genuity Inc., tax claims in bankruptcy court, and approving the cancellation of taxes remaining on the Cricket/Leap, Genuity, and K-Mart affected accounts

**II. AGENDA ITEM SUMMARY**

The Board is being asked to approve the request of the Lane County Assessor to settle two telecommunications property tax bankruptcy cases, and to write off the remaining taxes on these two cases and on the K-Mart bankruptcy case.

**III. BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

Several large telecommunications businesses filed for bankruptcy protection in 2002-2003. Lane, together with other Oregon counties, reached a settlement of disputed taxes, for WorldCom, Inc. see Board Order 04-6-2-5. The final two telecommunications companies the Assessor is dealing with, Cricket/Leap and Genuity, are being brought before the Board today.

On April 13, 2003, Cricket/Leap filed for Chapter 11 Bankruptcy protection in the Southern District of California. On November 27, 2002, Genuity filed for Chapter 11 Bankruptcy protection in the Southern District of New York. Lane County, together with other Oregon counties affected by these bankruptcies, retained the law firm of Sussman, Shank LLP to represent us in these cases. The basic terms of those two proposed settlement agreements are set forth in the Analysis section below.

In addition, cancellation of the taxes remaining on those accounts affected by these bankruptcies is requested, together with cancellation of taxes remaining from the K-Mart bankruptcy, which had been filed in the Northern District of Illinois. For the K-Mart case,

no outside counsel was utilized, and that case has been settled pursuant to delegated authority in LM 61.060.

**Oregon Revised Statute 311.790 Cancellation of uncollectible personal property tax.** If the tax collector and the district attorney for any county determine that taxes on personal property that are delinquent are for any reason wholly uncollectible, the tax collector and district attorney may request, in writing, the county court for an order directing that the taxes be canceled. The court, when so requested, may in its discretion order and direct the tax collector to cancel such uncollectible personal property taxes. The order shall be entered in the journal of the county court.

### **B. Analysis**

The Department of Assessment and Taxation typically seeks approval to write off several accounts at one time, so grouping these three cases together is done here.

Through the bankruptcy proceedings, the Courts had the ability to reduce the amount of monies payable to all creditors. Given the state of the telecommunications industry when these cases were filed, the Courts could have found that the assessed properties had been overvalued. For comparison, the basic terms of WorldCom, K-Mart, Cricket/Leap, and Genuity agreements are:

#### *Previous Settlements:*

The WorldCom settlement provided for payment of the 2002 principal tax (Claim amount) at 60% with no amount paid for interest accrued.

The K-Mart settlement provided for payment of the 2002 principal tax at 87% with no amount paid for interest accrued.

#### *Proposed Settlements:*

The Cricket/Leap settlement provides for payment of the 2003 principal tax portion of claims filed at 80% and interest paid as provided by the confirmed plan at a rate of 8.25% per month from the effective date of the plan.

The Genuity settlement provides for 100% payment of the 2002 principal tax and interest paid at the Oregon statutory rate from the date of filing through the effective date of the plan and 50% of the Oregon statutory rate from then until April 1, 2005.

Outside bankruptcy counsel has recommended these settlements, and the other affected Oregon counties are also proceeding as recommended. Our agreement with the other counties is that each contribute to the cost of litigation pursuant to its pro-rata claims. Should the County not settle these two cases, future litigation costs would not be shared with other counties. Given that the two remaining cases are in New York and California, use of outside counsel is required. The check for payment of the Genuity case has been received, and is being held pending Board review.

**C. Alternatives/Options**

1. Approve the Cricket/Leap and Genuity settlements and the cancellation of the remaining taxes on those accounts and on the affected K-Mart accounts.
2. Approve any of the settlements and cancellation of the taxes remaining on those accounts and on the K-Mart account.
3. Do not approve any portion of the Order.

**IV. TIMING/IMPLEMENTATION**

Should the Order be approved, the agreements will be finalized and upon appropriate payment to the county being made, the remaining taxes showing on these accounts will be cancelled. The Genuity payment has been received, but not yet applied.

**V. RECOMMENDATION**

Option 1.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF APPROVING SETTLEMENT OF THE CRICKET COMMUNICATIONS, INC. (ALSO KNOWN AS LEAP WIRELESS INTERNATIONAL, INC.) AND THE GENUITY INC., TAX CLAIMS IN BANKRUPTCY COURT, AND APPROVING THE CANCELLATION OF TAXES REMAINING ON THE CRICKET/LEAP, GENUITY, AND K-MART AFFECTED ACCOUNTS

WHEREAS Cricket Communications, Inc. and Leap Wireless International, Inc. (Cricket/Leap) own property in Lane County subject to ad valorem taxes, at accounts 8529010, 8529011, 8529012, 8529013, 8529019, 8529018, 8529015, 85290177, and

WHEREAS Cricket/Leap filed bankruptcy on April 13, 2003, contesting, inter alia, its property tax assessments, and

WHEREAS the Assessor, together with other affected Oregon counties, has agreed on terms of settlement in substantial conformance with those set forth below, and

WHEREAS it is necessary that the Board approve the settlement and the cancellation of taxes remaining on these Cricket/Leap accounts, and

WHEREAS Genuity, Inc. (Genuity) owns property in Lane County subject to ad valorem taxes, at accounts 8524537, 8524536, 8524534, 8524535, and

WHEREAS Genuity filed bankruptcy on November 27, 2002, contesting, inter alia, its property tax assessments, and

WHEREAS the Assessor, together with other affected Oregon counties, has agreed on terms of settlement in substantial conformance with those set forth below, and

WHEREAS it is necessary that the Board approve the settlement and the cancellation of taxes remaining on these Genuity accounts, and

WHEREAS K-Mart Corporation (K-Mart) formerly owned property in Lane County subject to ad valorem taxes, at accounts 5372212, 5252885, 5562729, 5562730, and

WHEREAS K-Mart filed bankruptcy on January 22, 2002, contesting, inter alia, its property tax assessments, and

WHEREAS the Assessor has agreed on terms of settlement, and

WHEREAS these settlement terms with K-Mart were within the delegated authority pursuant to LM 61.060 and this bankruptcy case has been settled, and

WHEREAS it is necessary that the Board approve the cancellation of taxes remaining on these K-Mart accounts, and

WHEREAS the Assessor does request that the Cricket/Leap and Genuity settlement terms be approved and that cancellation of the remaining taxes on the above referenced accounts be allowed, and

WHEREAS the terms of the proposed Cricket/Leap settlement agreement provide for payment of the 2003 principal tax portion of claims filed at 80% and interest paid as provided by the confirmed plan at a rate of 8.25% per month from the effective date of the plan, and

WHEREAS the terms of the proposed Genuity settlement provide for 100% payment of the 2002 principal tax and interest paid at the Oregon statutory rate from the date of filing through the effective date of the plan and 50% of the Oregon statutory rate from then until April 1, 2005,

NOW, THEREFORE, it is hereby ordered that the Assessor be authorized to enter into settlement agreements in substantial conformance with the terms above, and it is further

ORDERED that the Assessor take such actions as are necessary to cancel the remaining taxes on the property tax accounts set forth herein.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

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Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 10-3-5 Lane County



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OFFICE OF LEGAL COUNSEL