

MINUTES
Troutdale City Council – Special Meeting
Troutdale City Hall – Council Chambers
104 SE Kibling Avenue
Troutdale, OR 97060-2099

Tuesday, December 16, 2008

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Thalhofler called the meeting to order at 7:00pm.

PRESENT: Mayor Thalhofler, Councilor Kight, Councilor Ripma (7:04pm), Councilor Thomas, Councilor Canfield, Councilor Kyle and Councilor Daoust.

ABSENT: None.

STAFF: Dave Nelson, City Administrator; Debbie Stickney, City Recorder; and David Ross, City Attorney.

GUESTS: See Attached.

2. PUBLIC HEARING / RESOLUTION: A resolution approving a cable services franchise between Verizon Northwest, Inc. and the City of Troutdale, Oregon.

Mayor Thalhofler read the resolution title and opened the public hearing at 7:02pm.

Councilor Thomas stated tonight we have three options in front of us. Option A is the Mt. Hood Cable Regulatory Commission's recommendation. Option B is a Troutdale version of the Gresham franchise that the City of Gresham approved a couple of weeks ago. Option C is a resolution to become a part or a subset of the Gresham franchise, similar to what the City of Fairview and the City of Wood Village have already approved. The MHCRC's recommended version (Option A) really went the furthest to try to protect not only the City's rights but also the citizen's rights. However, it is well known that Verizon will not sign that version. Option B came about after MHCRC recommended our version and the City of Gresham opted to renegotiate a few of the points. Although the franchise as presented by the MHCRC was about 90% done, there were a few major sticky points that we were not able to reach a resolution on. Based on the way that the MHCRC charter is set up, we have the responsibility to try and get a recommendation forwarded to the cities but we don't have the authority to give up your rights as a city; only the cities can do that. Verizon and the City of Gresham negotiated a stand-alone franchise (Option B) with some added items to allow other cities to become part of that franchise. That franchise included a 10-year lock on the customer service standards, and a graduated fine cap (around \$140,000 of total fines but there are five separate areas and each one of those areas has a different fine amount). The way it is set up is if we find them guilty of failure to provide proper customer service, we are

limited to a fine for a specific amount for a twelve month period which is also based on the number of subscribers that are within the Verizon franchise area. The other area where there was concern was Title 2 (telephone regulations) versus Title 6 (rules and regulations that govern the video franchise cable television). We as a city or the MHCRC have no control over telephone regulations; those are handled by the state. Option C, the addendum to the Gresham franchise agreement basically has the city being a part of that franchise. We have some concerns about this. This was just provided to us about two weeks ago and we have not had the opportunity to do a lot of due diligence. My thought is that it probably works to the best advantage for Verizon to just have one franchise and the others are just a subset of that franchise, but we don't know.

Mayor Thalhoffer stated customer service is really important to me. I am a business man and I deal with entities all day long and I don't have time to waste being on hold. Tell me about how MHCRC and Verizon disagreed on the customer service regulations.

Councilor Thomas replied the main point of the disagreement was that each city has its own customer service standards with regards to the cable television and there are certain requirements within those. Verizon wanted the cities to not be able to change their customer services standards for the length of their franchise.

Mayor Thalhoffer asked is that the only unresolved customer service issue?

Councilor Thomas replied that was the main thing they wanted. The Troutdale version of the Gresham franchise has that ten year lock in it so if we change our customer service standards it would not apply to Verizon. Also, because of the way that the Comcast franchise is written, it would not apply to them either. We have what is called a "level playing field" clause. I think you received a letter today from a Comcast representative talking about the clause in their franchise that says anything a competitor is given they would also receive.

Mayor Thalhoffer asked if we have a customer service problem with Comcast what can we do?

Councilor Thomas asked as it sits today?

Mayor Thalhoffer replied yes. Is there any restriction on us being able to raise a complaint to Comcast?

Councilor Thomas stated the way it sits today with Comcast is if there is a substantiated customer service issue then the MHCRC on your behalf would hold a public hearing and we would determine whether or not they were in violation of the franchise agreement. If they are in violation of the customer service standards we would require them to pay the appropriate fine.

Mayor Thalhoffer asked under the Verizon franchise could we do that?

Councilor Thomas replied you still have the ability to enforce your customer service standards. The difference is that with Comcast they have no caps on the fines; Verizon has opted to cap the fines at \$15,000 if you have 7,500 or less subscribers.

Mayor Thalhoffer asked what about the 10 year restriction?

Councilor Thomas stated the ten year lock says that you cannot change your customer service standards for the ten years.

David Ross, City Attorney stated I think there are probably three issues surrounding customer service. One of them is the fine cap, which you have discussed. The other is the binding future councils issue, and that is that you are waiving your legislative ability to change the customer service standards for the period of the franchise. In affect you are binding future councils to the standards that currently exist. I would probably be remise if I didn't say that the customer service standards that exist today were adopted in June of 2001 and haven't been revisited since then, so it is not like it is something that occurs on a frequent basis. However, technology is changing and things could change in the next ten years and what this does from a practical point of view is it locks you and it locks Verizon into the existing standards that were adopted in June 2001. The legal issue is whether or not it is actually ultimately enforceable if a city council six years from now decided that they were going to exercise their legislative prerogative and amend the customer service standards, they could probably do that. Verizon would probably say that it was a breach of the franchise agreement and it would undoubtedly result in costly litigation.

Mayor Thalhoffer asked can you explain the fine cap in more detail. If there is a violation of the customer service standards, what would the fine be for one violation right now with Comcast and what would it be with Verizon?

Councilor Thomas replied using an example of the most recent case with Comcast, they had failed to meet the 30-day notice requirement, which is a violation of the customer service standards. This was the third time that it had happened, so the MHCRC looked into this and we determined that yes they were in violation of the 30-day standard. What had happened is they had recently dropped a service from their standard lineup and for people to get that channel back they had to buy an additional box at the cost of \$1 per month; in essence it was a rate increase without notice. The MHCRC determined that they were in violation and roughly 44,000 customers were affected by that. The fine was approximately \$44,000. If this same violation occurs with Verizon the maximum fine could only be \$15,000 in a rolling twelve month period. If they had the same violation a second time during that twelve month period we would not be able to fine them for that.

David Ross stated there is a definition of call answered, or call transferred, or waiting time which is another one of the customer service standards issues.

Mayor Thalhoffer asked Councilor Thomas to explain this.

Councilor Thomas replied within your customer service standards there is a requirement that when there is a call for customer service, from the time that they request to speak to an

individual (which is different from the automated voice response systems) you have 30 seconds for a qualified person to answer the call 90% of the time. What this proposed franchise with Verizon has is that when the voice response system picks up the call, then the 30 second requirement has been met.

Councilor Canfield asked so the new telephone answering time is that when the computer voice response system answers the call that would satisfy the new telephone answering time regulation, regardless of how long it actually took to reach a live person?

Councilor Thomas replied when the voice response system picks up the call all requirements are met.

Councilor Canfield stated that is a fascinating concept. How does it work for Comcast right now?

Councilor Thomas replied with Comcast when you call in and at the time you say you want to speak to a customer service representative they have 30 seconds from that point to have a live person pick up the call 90% of the time. They have been meeting that 30 second requirement about 95% to 98% of the time.

Councilor Canfield asked what kind of discussion was there by the MHCRC regarding this issue?

Councilor Thomas stated the MHCRC did not want to give that up.

Councilor Canfield asked what is your personal opinion as a city councilor?

Councilor Thomas replied I am a firm believer in customer service.

Councilor Kyle stated I have had FIOS before so I know that it is good. Do you think that there are fewer problems with it then there might be with cable?

Councilor Thomas replied as far as the technology?

Councilor Kyle replied yes, does it operate better with less trouble?

Councilor Thomas replied I would say that if you had Verizon and Comcast sitting here they would say that both systems are equal.

Councilor Daoust asked how are the terms different between Options B and C?

Councilor Thomas replied Option B is an actual franchise between the City and Verizon. With Option C, we would basically become part of the Gresham franchise.

Councilor Daoust asked how is that any better for Verizon? The terms are the same.

Councilor Thomas stated the terms are the same. The difference is that because Gresham is the franchise holder they could go and negotiate changes with Gresham which could impact us but we would have no say. In addition, if we needed something in the franchise to be changed we would have to somehow convince the City of Gresham that the changes need to be made. There are a lot of things we don't know about this, mainly because it is new and something we haven't seen before.

Councilor Daoust stated I am puzzled. If the terms are the same as Gresham's adopted franchise terms, why does it say under Option C, "Will avoid potential litigation"? I do not understand that.

Councilor Thomas stated I asked the city attorney about that earlier today and that was something that should not have been put in the staff report.

Councilor Daoust stated that makes it sound like Option C is much more amenable to Verizon than Option B is.

David Ross stated I believe that it is and Verizon will speak to that. I was told on Thursday that Verizon will not support a separate franchise.

Councilor Daoust stated I thought we were all going to come up with separate franchises; I thought that was the whole idea.

Councilor Thomas stated that is what I originally thought as well until two to three weeks ago.

Councilor Daoust asked if we do go with a separate franchise, Option B, can Verizon charge different fees to Troutdale citizens if we have a slightly different franchise than Gresham?

Councilor Thomas replied I don't believe they would.

David Olson, Staff at MHCRC, stated I have not gone through Options B or C in detail but I do understand that they are basically modeled on Gresham's franchise. In terms of the rate question, generally the franchises do require uniform nondiscriminatory rates throughout a franchise area. To the extent that you are adopting either the Troutdale franchise or as a subset of the Gresham franchise, I believe the franchise area would be considered on a combined basis and the rates would have to be nondiscriminatory based on the combined franchise area of the agreement that you enter into. I would not think that there would be an opportunity for different rates regardless of whether you entered into Option B or C.

David Ross stated I believe that each separate agreement, whatever form it takes, defines the service area by the corporate city limits and that it is not a combined service area. I think the difference is in the Gresham agreement there is a definition of an expanded service area that is going to be covered sometime in the first three years, but other than that I think that each of the agreements is jurisdictional to the corporate limits and it is not a combined service area.

David Olson replied most definitely. The practice that we have seen is that they like to do these regionally and nationally and I can't tell you a situation where there have been these jurisdictional kinds of differences.

Councilor Daoust stated in dealing with a regional company, how would we get a handle on customer service complaints just within Troutdale? Given the fact that the company is much wider than Troutdale and they handle everybody the same, how could we get a handle on customer service complaints just within our own city limits? Are we going to be able to enforce that just within the city limits of Troutdale if everybody else is different than us?

Councilor Thomas replied we can do that.

David Olson stated one of the MHCRC's duties is to do exactly that on your behalf. We take those calls and we measure them against whatever standards are in place and enforce it on your behalf.

Councilor Daoust asked it is not just based on customer calls is it?

Councilor Thomas replied most of it is generated by people calling and complaining.

Councilor Daoust stated so Verizon wouldn't be forced to break down their database just for us?

Councilor Thomas replied no. Comcast doesn't do that either.

Councilor Daoust asked when does the Comcast franchise come up for renewal?

Councilor Thomas replied December 31, 2010.

Councilor Daoust asked so will it be MHCRC's intent to bring Comcast to the same standards as Verizon two years from now?

Councilor Thomas replied each company negotiates differently. We will try to keep as much as we can. Our goal would be to maintain the same service level as we have today. If you approve Option B or C with Verizon, those customer service standards will automatically become a part of the Comcast franchise upon the execution of the agreement. What would happen in negotiations is we would most likely have to carry those customer service standards forward. If Comcast receives additional benefits then in the same token Verizon would receive that same benefit as a result of the "Level Playing Field" clause.

Councilor Daoust stated a lot of times we will ask to see what the other cities around us are doing and it seems like everybody else around us is going with Option C. Is that correct?

Councilor Thomas replied Gresham has a franchise with Verizon; Wood Village and Fairview have opted to go with Option C, which is to become an addendum to Gresham's franchise.

Councilor Kight asked in the twelve years that you have been on the MHCRC how many complaints have Troutdale citizens filed with the MHCRC?

David Olson replied we probably receive 200 to 400 per year, so Troutdale would have a proportional share of that in proportion to the number of subscribers Troutdale has.

Councilor Kight asked how many of these complaints come before the MHCRC?

Councilor Thomas replied they don't come to us as complaints, they come to us as issues. When there are enough complaints filed regarding one issue then the MHCRC will look into it. That has occurred three separate times in the last twelve years.

David Olson stated at staff level they work to resolve the issues so the number of complaints that are unresolved and go to the Commission is much smaller. Unresolved complaints that present regulatory issues, the Commission has tackled them.

Councilor Kight asked how many of them have risen to the level of a fine, other than the 30-day requirement that they didn't meet?

David Olson replied there were two prior major fines imposed by the Commission in 2000/01 involving a failure of Comcast's predecessor AT&T Broadband to meet the phone standard over four to six consecutive quarters. That fine was in the \$200,000 range. To Comcast's credit, when they came in 2002 they did an excellent job in cleaning up the customer service problems left by AT&T Broadband and the Commission has not needed to go back and discuss fines again.

Councilor Kight stated so with Comcast, other than the 30-day requirement that they didn't meet, how many fines have been imposed against them.

Councilor Thomas replied that is the only fine against Comcast.

Councilor Kight stated from 2001 to 2008 that is the only fine to Comcast. The amount of the fine was \$44,000, is that correct?

Councilor Thomas replied yes.

Councilor Kight asked given the same scenario Verizon would have paid \$15,000?

David Olson replied that is correct.

Councilor Kight asked who actually pays that fine?

Councilor Thomas replied the company.

Councilor Kight asked how does the company derive the income to pay for that?

Councilor Thomas the company absorbs that fine.

Councilor Kight asked is Verizon open to entertaining the idea of Option B?

Councilor Thomas stated I think they prefer Option C.

Councilor Kight asked the terms of Option B and C are the same, the only difference is the form. The form being that we would have either a direct contractual agreement with Verizon as opposed to a subset with Gresham, is that correct?

Councilor Thomas replied yes.

Councilor Kight asked would there be any benefit to the City signing on as a subset or an addendum with Gresham?

Councilor Thomas replied I don't have an answer to that question.

Councilor Ripma asked what was the process for Verizon to apply to provide cable service?

Councilor Thomas replied they came in and made a request for a franchise and we started negotiations with them roughly two years ago. Over that period of time we met twenty to twenty-five times and in the process they presented what they had as their cookie-cutter franchise that they wanted. We presented back to them what we currently have within Multnomah County. Our staff worked with their staff to try and resolve all of the issues to get a franchise.

David Olson stated the Commission did everything possible to start those negotiations with Verizon in January 2006 and Verizon declined to do so. They were not ready to start negotiations at that time. The Commission was not able to begin negotiations until April 2007 because that is when Verizon told the Commission that they were ready.

Councilor Ripma stated at the time they applied they knew that cable services were being provided under the rules that Comcast is operating under. Did anyone else apply to provide cable service other than Verizon?

Councilor Thomas replied not recently. We have had other companies in the past. There were a couple of franchises that we actually approved in the past. We have always encouraged competition so that hopefully the consumer will benefit in the end by having more choices.

Councilor Ripma asked so others could come in and apply?

Councilor Thomas replied yes, it is a nonexclusive agreement.

Councilor Ripma asked how would you characterize the major differences between Option A, the recommended franchise agreement and Option C?

Councilor Thomas replied in the MHCRC's proposed franchise we agreed to a 5-year lock on the customer service standards and a \$200,000 cap on the fines in a twelve month period. Under the cable services definition we said that we would agree that the video service is the "lightwave", which is the light that goes through the fiber optics that the signal is passed on; we would agree to that however we reserve our rights under federal, state and local law if that changes. Those are the three major differences. We did not have anything in the proposed franchise that says we will forego the 30-second telephone answering requirement.

Councilor Ripma stated so those are the things that exist under the Comcast agreement and are not in Options B or C.

Councilor Thomas stated with the exception that for Comcast there are no exceptions for customer service; there is no lock on customer service and there are no fine caps. There are a few differences between the Comcast agreement and the MHCRC's recommended franchise agreement with Verizon.

Councilor Ripma asked so the MHCRC was prepared to give a little.

Councilor Thomas stated yes. We gave what we thought we could, but there were some things we didn't think we could because they fall under the city's purview and we didn't feel as a Commission that we had the right to give up the City's rights.

Councilor Ripma asked is Option A similar or the same as Comcast's franchise?

Councilor Thomas replied it is similar.

David Olson stated after seventeen months of negotiations the MHCRC went as far as I think we could go in offering compromises on these key issues. The Commission offered compromises on all of the issues, but it was clear in the end that Verizon was not prepared to accept those. To that extent, in those areas, compromises were offered in the Commission's recommended franchise; it is not the same as Comcast's franchise because compromises were offered but they were not sufficient to enable Verizon to agree to it, which is why these issues came before you and the other jurisdictions.

Councilor Ripma stated if we were to approve Option A, MHCRC's recommended franchise, Verizon would not be providing cable service apparently. Comcast would still be providing cable service in Troutdale and others would have the opportunity to provide the service. The way I see it is the other choice is to lower the service level, or at least the MHCRC's ability to enforce service levels. Is that a reasonable statement?

David Olson stated I cannot disagree with that characterization.

Councilor Ripma asked could the MHCRC still function with Troutdale having the Option A franchise and Gresham, Fairview, and Wood Village having a different franchise?

Councilor Thomas replied absolutely. We manage five different franchises now.

Councilor Canfield asked Comcast has no lock in their franchise agreement on changes to customer service standards at the present time, is that correct?

Councilor Thomas replied yes.

David Ross asked David Olson to highlight the three core issues that the MHCRC and Verizon did not come to agreement on.

David Olson stated you have legislative authority to revise customer service standards, which in our view is what the federal law says and Verizon is not prepared to acknowledge or agree with that and instead wants those to be frozen in the franchise. If you are not prepared to do that our understanding is that Verizon is not prepared to agree to offer service here. Another issue is the definition of cable service under federal law. Verizon wants a definition with supplementary language that is different from the federal definition and wants it to refer only to the "lightwave" element and at the same time not allow you to include a non-waiver provision. They are not prepared to sign a franchise in which you recite that you are not waiving your local authority. They want language excluded whenever it says you are not waiving local authority. We know what that means; it means it is an implied waiver of local legislative authority. The issue of the fine cap is the other core issue. The Commission did agree to a fine cap as a compromise at \$200,000. Verizon has said that they would not agree to a franchise with a fine cap at that level (\$200,000) and instead they negotiated with Gresham what you see in Option B. Those are the three major issues; the non-waiver, fine cap, customer service lock. To that I would add the telephone customer service standard which was very important to the Commission.

Larry Manion, Verizon representative, stated tonight we are trying to simply get authorization to offer a competing cable television service in the City. Verizon is committed to providing quality customer service. We recognize first and foremost that if we don't do that we won't have customers; we won't gain them initially and we won't retain them. We have agreed to the customer service standards that you have had for many years. No one has expressed what the changes to those might be. If there was some unforeseen technological change that would drive some new customer service standard that has never been envisioned, there is a provision in the contract that says that both parties would have to sit down and agree to what that is. Verizon has never said we wouldn't negotiate if there were some radical change like that. We have not had call answer time complaints in the other municipalities in the area in the year that we have been in service here. What we have tried to do is take advantage of the systems and the processes we have had in place for many years. We have taken a huge financial risk to get into business here and to upgrade the network with the state-of-art service that we have put out there. In order to be a second provider we face a huge competitive risk. Another really important thing that has to be clarified here, that I don't think has been correctly described, is the character and nature of the third option before you tonight. That is a stand-alone agreement with the City of Troutdale. It encompasses the terms and conditions that we have negotiated with Gresham. If Verizon were to negotiate different terms/conditions with the City of Gresham, what is before you would still be in place for Troutdale, unchanged. If there was some term or condition that the City of Troutdale negotiates with us subsequently, it would not have any effect on any of the other parties, with one exception that is clearly outlined in the proposal that Verizon put forward. That exception

is in the event that Gresham would revoke our franchise, then Verizon has clearly stated that there are certain terms and conditions of the agreement that would have to be renegotiated because the scale of what we negotiated was done as a collective whole. Unfortunately, Gresham is just such a big part of what is here in the area, if they were to revoke our franchise it would be difficult for us to offer each little city the same terms and conditions because it was intended to be a collective agreement. The reason we took this approach was to be as clean, simple and straight forward as we possibly could. The second alternative would take a lot more work before it was refined enough to where it would be acceptable to Verizon. There are a lot of problems with it. You are basically getting the same terms and conditions under Option C as Gresham received and they are not going to change by any action that Gresham or any of the other municipalities would undertake. It is a Troutdale specific agreement.

Councilor Daoust stated I think the word addendum is throwing us off.

Larry Manion stated we started out with the approach of having a separate agreement for each one of the cities. In our negotiations with Gresham they didn't want to take that approach, so we came up with this approach which was coined an addendum. Unfortunately that has the connotation that you are just an add on, which I don't believe is the case. Clearly that agreement has attached to it the Gresham agreement and you are entitled to all of the terms and conditions that are in your exhibit. We are doing this at a faster rate than we had anticipated that it would happen. This has been very difficult and we did not want to throw away all of the things that we had negotiated over the seventeen or eighteen month period with the Commission, nor did we want to impair their ability to act as your administrator of the agreement when it was all said and done. We have retained what we did negotiate, which David and I characterized as 90% of the agreement or more. Those are the key points that we wanted to highlight that we believe are a little different than what was characterized. The call answer time is something that I think is more emotional than is real. It is true that our call answer time measurement is different than what is done with Comcast today. But we don't believe that you should exclude from the call measurement those calls that are effectively and efficiently answered by an automated system. Most of our customers never have to talk to a live person to get their issue or their concern resolved. We are not having call answer time complaints from our customers. It would be difficult for us to come up with different standards for every single municipality. David made an interesting point in how we were slow in getting to you. We have been going as fast as we possibly could, but we have to use the time and resources that we have available to us efficiently. Since we started working with the MHCRC staff on the agreement, we have completed another twenty-five agreements with other cities in this same area. They are all virtually the same. The one that is the most different happens to be this one. I think both sides offered many alternatives to several parts of this agreement. We did everything that we could on both sides to come up with a fair agreement. By federal law, these agreements only have to be reasonably comparable, they do not have to be identical. Inherently the incumbent provider has so many more customers than we have here that they have a huge advantage over us. To fine us the same amount as them when we have virtually no customers is not an acceptable business risk to Verizon. We feel this is a reasonably comparable agreement to what Comcast has. I would be remiss to mislead you to think that we feel like the second alternative is close enough that we could sign it. There are a lot of things that are wrong with it. But I will tell you that the only thing

that is different between what we offered Gresham and what we are offering you is the service area and that one simple provision that says if Gresham revokes the agreement, that is the only time that you would be affected.

Councilor Thomas stated I didn't intent to characterize you in a negative way. You are right, Option C is kind of vague and is something new for us to look at. I have talked to our city attorney and if someone thinks that I should step down because of my position/involvement on the MHCRC I am willing to do that.

Larry Manion stated you are a city councilor; this isn't a conflict from that perspective in my opinion.

Councilor Thomas asked if we approved our own stand-alone franchise, essentially Gresham's franchise with Troutdale in its place, how is that different from going with Option C? You say there are several things that need to be changed.

Larry Manion replied when our attorneys sat down with Mr. Ross they identified a number of items that would have to be reworked. We tried to keep this as simple as possible. All that the exhibit does is changes the service area; everything else is identical to what Gresham has. By modifying it you have to restructure a lot of the language that goes to things that were anticipated when we did the Gresham agreement. Quite frankly we would probably have to go back and open up negotiations with those cities we have already completed.

Councilor Thomas stated Option B is the Gresham franchise with the word Troutdale in its place.

Larry Manion stated there are a lot of problems with that. Gresham is different than Troutdale when you look at them individually versus collectively. We went through and looked at it and there are a lot of language changes that would have to be done. It is not as simple as just plugging in Troutdale where it reads Gresham.

David Ross, City Attorney, stated we spent about a half hour on the phone and there were no specific issues that were identified other than it was a parallel agreement and it would be confusing. There were no specific language differences that were identified to me that needed to be worked out.

Emma Zavala-Suárez, of Stoel Rives (Legal Counsel for Verizon), stated I would agree with that. I would also add to that that the end-line premise that Verizon had concerns with was taking the approach that essentially the redrafted version from the city attorney was trying to reach the same terms and conditions as the Gresham agreement. In doing so you ended up with an agreement that, for example, had taken off a complete paragraph so there no longer existed an extended service area. The agreement also had two completely new provisions, and added one defined term in a different place. The problem for Verizon, and the concern was that we would end up with two documents, two separate agreements, that purported to be the same agreement with the same terms and conditions, but on its face even, it already looks different. There were other pieces in there where we had concerns where there were certain words that were changed throughout the document. We felt that with the addendum

we would reach that same place in a much cleaner and clearer manner. We are sorry that it is called an addendum; this is intended to be a stand-alone agreement with the City of Troutdale.

Mayor Thalhoffer stated when we first started talking to Verizon about this agreement it was my understanding that this would be an agreement between the City of Troutdale and Verizon. At no time was there any thought that we were going to be involved in an agreement with Verizon and Gresham. The City of Gresham often has a different attitude and likes and dislikes than the City of Troutdale. In fact Fairview and Wood Village are different from the City of Troutdale. We are all four sovereign jurisdictions. What this has turned into is divide and conquer where you have forged an agreement with Gresham and then the rest of us, because we are smaller, have to fall into line and go along with that or else we don't get your services. I think Option A is good and you won't go along with that. You won't even go along with Option B, even though that is the Gresham franchise with Troutdale's name in it. I don't understand this. Competition is one of the driving elements. People want competition but we want it under the right conditions. We don't want to give up our rights as a city in order to give our citizens a competitive cable company. Could you explain why Option B and C are so different? They have the same language; we are just replacing Gresham with Troutdale.

Larry Manion stated I think our attorney just said it is not the same language. We tried to do this the cleanest and simplest way that we could. With Option C you do have a stand-alone Troutdale specific agreement with the same terms and conditions as Gresham, Fairview and Wood Village.

Councilor Canfield stated competition is indeed welcome for video services. You said that the issue of call answer time is more emotional than real, could you elaborate on what you meant by that?

Larry Manion replied we have an objective of answering our customers efficiently and we have a hold time of 30 seconds. Every call that comes into the automated system counts in the denominator. Every call that gets transferred whether it is from the automated system to a live body, or from one live body to another live body, they all count as another call that goes in the denominator. What we are saying is that every call that is efficiently answered counts whether it is automated or by a human body. To ignore the efficiency of the automated calls in our opinion that is not correct, nor is it consistent with what we do around the country. We are not trying to avoid answering our customers and making them happy. We are not receiving complaints on our call answer time.

Councilor Canfield asked what percentage of the calls in your system are handled by the automated system versus having to talk to a live person?

Larry Manion replied I don't know the answer; I can get the answer for you.

Councilor Canfield stated Comcast does not have a lock on changes to the customer service standards. What is Verizon's objection to a similar arrangement?

Larry Manion replied it is simply a matter of wanting certainty for a reasonable start-up period of time. If there was a standard that you wanted to change, we don't know what that is. Those are good comprehensive customer service standards.

Councilor Canfield asked so you still wouldn't consider 5 years a reasonable time to get your business started?

Larry Manion replied we have basically got 15 year agreements in most places. We lowered the total term of the agreement to 10 years. It usually takes 5 years to get to the customer base that you are going to get to. We are entering an extremely difficult situation where you have an entrenched virtually monopolized provider. We know it is going to take a long time to even build up a reasonable amount of customers. We felt like 10 years was not an unrealistic number; that is the shortest term of a contract that we have agreed to any place in the country.

Councilor Canfield asked so Verizon feels that a city like Troutdale does not have the authority to legislate customer service standards?

Larry Manion replied no that is not what we believe. We believe that you do. What we disagree on is whether those can be changed at anytime during the contract. You most definitely have the right to establish customer service standards. The question that we have always disagreed on was whether those could be changed at any time during the term of the contract. We don't believe that the federal law allows them to be changed like that. Mr. Olson disagrees with that.

Councilor Canfield stated I agree with Mr. Olson and Mr. Ross so I guess we will have to agree to disagree on that. Do you require customers to lock in for a specific period of time for your video services?

Larry Manion replied no. There is a term if there are special things offered like a radical discount or special promotion. It is pretty clear that most people can get out of the service contracts for any variety of reasons. I don't think they are any different than what Comcast has or any other cable provider.

Councilor Kyle stated the MHCRC representatives were talking about how we can waive a federal rule. Could you elaborate on that?

Larry Manion stated there are two issues. Fundamentally, Congress gave cities the right to establish customer service standards. One school of thought is that allows you to change those at any time. We don't believe that is the case. We believe that it is common practice in the industry to establish those and it is reasonable to establish those for the term of the contract and that is typically what is done. The other question goes to, can you as a legislative body enter into an agreement that basically locks in a future council. There is case law that goes directly to the establishment of taxes and some other things. We don't believe that this type of contract falls under that. It is just a difference of opinion between the two parties. I wouldn't say that there is clear case law where that has been proven one way or the other.

Councilor Kyle asked where are you as far as the length of time for start-up?

Larry Manion replied basically we have deployed the technology throughout the city and we are ready to turn on the service when we are authorized to do so and get a franchise.

Councilor Daoust asked what drives you to respond to customer service complaints? Is it the marketplace or is it a franchise agreement?

Larry Manion replied it is the marketplace. The customer service standards drive us as well. It is both, but primarily it is the customer's desire for service.

Councilor Kight stated one of the issues that was brought up in the course of our conversation here was your response on the phone service, when it is picked up and so on. In other jurisdictions where you have agreements do you have different agreements relative to phone service?

Larry Manion replied no.

Councilor Kight stated so it is standardized throughout your company.

Larry Manion replied right.

Councilor Kight asked if they did have different levels of phone service, how would you implement that?

Larry Manion replied it is very difficult for us because our call centers are not specific to a city or a county or even to a region.

Councilor Kight asked what do you see as the benefits to competition in our market area by allowing your product to be here?

Larry Manion replied I think it is two-fold. First of all go to the pricing issues. We are basically offering the same price no matter where you are in the country. Typically what you are seeing is that the consumer gets a lot more television for the same dollar. The actual amount that they are currently paying doesn't change but they get a whole lot more television and the quality is second to none. The other thing that they get is if we don't step up to the plate and provide good quality customer service then they have an option to go elsewhere. Typically where competition exists the standard rises for everything.

Councilor Kight asked how does your product differ from what Comcast offers?

Larry Manion replied by the end of this year there will be approximately 150 high definition channels. I don't believe Comcast has that many high definition channels.

Councilor Kight asked in other markets within the Portland Metropolitan area where you have agreements, how are those agreements different from the one we have before us tonight?

Larry Manion replied we have attempted to keep the terms and conditions around the country fairly consistent so that we have a ghost of a chance in administering them. We have almost 1,500 agreements around the country and trying to administer those is a challenge. I would say that the agreement that we have here, based on the 90% that we negotiated with MHCRC represents a lot of difference. For example, we have our own customer service standards. We have abandoned those standards and adopted what is out here and then just identified two specific differences. If you were to run a redlined comparison between the language in our standard agreement versus what we have in front of you, it is virtually all red. We attempted to do that to meet differences in the Comcast agreement and what MHCRC staff was comfortable with in terms of the way things are worded. There are a lot of things that are different but we believe that most of the provisions are comparable in those other areas just as they are here.

Councilor Kight asked is there any benefit to Option C over Option B?

Larry Manion replied Verizon is very comfortable that Option C is clean, simple and it guarantees you the same terms and conditions as Gresham. It is a stand-alone agreement. We are uncomfortable with Option B; it would take a lot more work.

Councilor Kight asked are we giving up any rights if we go with Option C as opposed to Option B?

Emma Zavala-Suárez replied no. Again, if that logic stood then we would also be saying that the other cities gave up their rights as cities by signing the addendum and in no way was that ever part of the negotiations. You have an agreement just like Gresham does. It is the intent of the parties to draft an agreement and that is what you have before you.

Councilor Kight asked if we were to accept one of these resolutions, how soon would you be able to provide service to the folks in Troutdale?

Larry Manion replied once the agreement is signed by both parties we have to go to the FCC and they authorize us to be in business. At that point and time we can start service. It is a matter of days.

Mayor Thalhoffer asked is there anyone here that would like to speak to us on this issue?

Matt Wand, resident, stated I have been very interested in this issue from the beginning. I have been very frustrated with the process. I think what we have here today is an opportunity to make a philosophical choice. The philosophical choice before the city today is whether we continue to rely primarily on a government regulated monopoly to protect our citizens, or whether we rely upon our citizens empowered by competition to protect themselves and make their own choices. Unfortunately, what I saw in the negotiations between the MHCRC and Verizon was the notion that the only way that our citizens could be protected is if there is an all powerful government taking care of them. That frustrated me. It is very apparent to me that if we as a city intend to move forward and make sure that citizens are empowered to make their own choices and make sure that our businesses have access to the best

technology, then we have to be willing to work cooperatively and work together with service providers who want to come here. Troutdale is a small town, we like it that way. When you are talking about the enormous amount of infrastructure investment that comes with competing with a monopoly and also with laying fiber in the ground, the fact that they are willing to be here is something that we should be excited about. Instead what we are doing is concerning ourselves with the potential loss of power in a government agency. The addendum is a separate stand-alone contract. I have looked through it and read it; it is a contract. One of the things that I didn't hear out of the lawyers that were talking here today is the notion that anytime you have a written agreement it is better lawyering to attach as an exhibit what you are talking about then to simply reference it and hope that somebody ten years down the road will be able to figure out what you are talking about. The reason the Stoel Rives lawyers from Seattle are sitting here telling you that they prefer Option C is because it is cleaner; that might sound like a pretense to someone who doesn't read contracts, but when you are in that business you recognize that isn't necessarily a pretense. What they are trying to do is provide adequate legal counsel and providing adequate legal counsel means meaning what you say and saying it in the clearest, cleanest possible manner. If you don't it becomes a litigation trap which isn't what anybody wants. It seems to me that the public interest is best served by having competition. The differences between the agreements that MHCRC dug their heels in on are differences that if this council respects its citizens and respects their ability to make choices are differences that need not prevent anybody from accepting this franchise agreement. I am asking all of you to support this; I think it is time and I think the citizens are demanding it and just as importantly to show our existing and future business that we intend to stay on the front edge of technology. This technology is necessary; we need to offer it for current and future businesses.

Mayor Thalhofer closed the public hearing at 9:05pm.

MOTION: Councilor Canfield moved that the City Council approve Option C, a resolution approving a cable services franchise between Verizon Northwest and the City of Troutdale. Seconded by Councilor Kyle.

Councilor Canfield stated we live in a great time for new technology and this proposal before us is a reflection of a great time. Another competitor in the video industry. The MHCRC has done a great job of negotiating the majority of this language for us and they have also done a great job in enforcing our previous agreements. However times have changed because there are some new providers now. You have Dish Network, Comcast and now we will have Verizon providing video services. All of these companies will presumably be providing phone service whether landline or wireless, and also internet service. All three of these things are just information, the only reason we are here tonight is because at the federal level the legislation has not caught up with the fast moving technology. All we are talking about is information in one form or another. I look forward to another competitor in all of these areas in Troutdale. I have concerns about the customer service standards with all of the companies. Unfortunately the realities of competition in this day and age requires the companies to provide a lower level of customer service in my opinion. Nothing we can do at the city can change the reality of the marketplace. As Mr. Wand stated, I think we should trust our residents to decide which service they prefer via competition. What is

relevant here is what is in the best interest of Troutdale citizens and that is why I favor this franchise agreement.

Councilor Kyle stated the word addendum was hard for us to get beyond because Troutdale doesn't want to be second to anybody or under anybody's thumb. I am excited for this technology to come to Troutdale and I know a lot of people are excited. I have received emails from a lot of citizens encouraging me to support this and so I am glad to do it.

Councilor Thomas stated I am glad Verizon clarified many of the issues about what Option C defines. I had originally thought that it was a subset. I think having it defined as a true contract with the city helps clarify some issues. My biggest concern about this whole process has been the customer service. I have always been a firm believer of customer service. I work for a company that values customer service and we actually rate our employees on their ability to provide customer service. I know that what Verizon has to offer is a very fine system. The video side of what we talked about tonight has nothing to do with business. Business is really based on broadband and their needs to access information via broadband. Video is purely more of a side for the average consumer or the average resident in Troutdale that wants to have more television to watch. I look forward to having Verizon here. I have always wanted a competitive franchise in the area, I think it is beneficial. I am concerned about the customer service.

Mayor Thalhoffer stated this is not about competition. We all want competition. I am in a highly competitive business; I don't mind. The MHCRC has represented us well over the years. Councilor Thomas has been our representative on the MHCRC for twelve years. I can't think of a time when they haven't represented us in a way that helps protect us because we are obligated to help protect our citizens. We are elected by our citizens to make sure that they get a fair deal out of agreements and franchises that we enter into. We have that responsibility. We appoint the members to the MHCRC but the fact of the matter is that the MHCRC represents us. They are working on our behalf. This community deserves competition but only under a fair franchise. All of the discussions over the past two years have been that we the City of Troutdale will enter into a contract with Verizon. We have a franchise with another provider and we didn't enter into an agreement with Gresham, Wood Village and Fairview and become a part of a pool. We are part of the Verizon pool. We enter into franchise agreements and other agreements as the sovereign City of Troutdale. In this case that is not happening. Option B is the Gresham agreement in Troutdale clothing and even that is not good enough. It has to be a Gresham agreement and we have to sign on as an addendum. Trying to get Verizon to answer the question of how is it different, we can't get a direct answer. Another thing that bothers me is during all of the negotiations it has been, it is Verizon's way or it is the highway; and that is the way it is tonight. They are telling us you sign up for Option C or you don't sign up. I have never dealt with a business that has worked with the City of Troutdale that has operated that way.

Councilor Daoust stated I am going to support the motion. It is not a vote against the MHCRC. It is not a vote of Troutdale versus Gresham. What I am voting for is the citizens of Troutdale. I agree with what Mr. Wand said. If we talk to our citizens in Troutdale and if I ask them if they are okay with a non-waiver for a certain number of years, and do you agree with a fine cap and call answer times they kind of look at me funny. They say I will tell Verizon whether I like them or not; I will drive whether I am satisfied or not as a customer. I have to step back and get out of the trenches of all of the details of this agreement and go to that viewpoint. I am forcing myself to step back and weigh what is the best thing for the citizens of Troutdale, and the best thing is to give them a direct voice if they are not happy. The fact is that Verizon is coming into a disadvantaged situation; Comcast is all over the city. Verizon will definitely stand up to the plate and not put up with bad customer service. I am satisfied that there is going to be a level playing field with Comcast and I am satisfied that Option C is a stand-alone agreement.

Councilor Kight stated I am going to support the motion. Verizon has made a major investment in the community. This is unparallel given our current downturn in the economy. That is \$100 million that was circulated in the Portland Metropolitan area. I think competition is good. I think that the folks in the community are going to see prices come down, not only with Verizon and their introductory offers, but also Comcast. Folks are going to get a great deal because of the competitive marketplace. At the end of the day the people in Troutdale are going to benefit. The 3,162 folks that are now subscribers with Comcast are going to see their bills drop and they will have a better level of customer service, especially as they transfer over to Verizon. That is why I am excited about bringing this technology, service level and the competition to the Troutdale market.

Councilor Ripma stated I am wondering if there is some misunderstanding on this Council about the investment Verizon is making in fiber optics. They have been installing it all over the city because they are providing broadband service and other services. They are entitled to provide cable service once they get a franchise approved. They have a program of installing fiber optics around the city regardless of whether they get this franchise. Please don't vote for this for that reason; they are installing the fiber and it is a good thing and I am all for it, but the \$100 million isn't based on fate. They have a business that they are doing right now around the city. The MHCRC has been second to none in the country in protecting the service levels and the customers and in a business that requires this kind of investment you need regulation. I have to say that I am disappointed to have comments in defense of a company and attacks on what seemed like the fairness of the MHCRC that are not based in fact. The MHCRC has always been fair and they work in the interest of the customers. While we probably all think that as we ratchet down the regulation things are going to get better and cheaper; I think we are forgetting the banking system. If one wants to think about the joys of having less and less regulation and more and more freedom. In industries where not everyone can come walking in and provide the service that requires a lot of investment, regulation is actually a good thing. Everyone gets a level playing field. Comcast operated under the MHCRC franchise and has been very successful and others can come in under that franchise, which is what I would

favor. Just a few weeks ago Gresham caved in to a franchise that doesn't protect the customers as well as the MHCRC franchise did. It isn't that much different. The other two neighboring cities fell right in line; that is not a reason for Troutdale to do it in my opinion. We ought to look at it independently like we always do. The system is being installed and somebody will provide cable service. I guess I think we are making a mistake in simply going along with Gresham; we are better than Wood Village and Fairview in our independence I think, usually. I am very disappointed that this council is just going to go along. I think we should stick to our guns. I am not going to support the motion.

VOTE: Councilor Thomas – No; Mayor Thalhofer – No; Councilor Canfield – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Kight – Yes; Councilor Ripma – No.

Motion Passed 4 – 3.

Mayor Thalhofer called for a 10-minute break at 9:29pm and reconvened at 9:41pm.

3. STATE OF THE CITY MESSAGE

Mayor Thalhofer delivered his State of the City Message (a copy is included in the packet).

4. PRESENTATION TO OUTGOING COUNCILORS

Mayor Thalhofer presented both Councilor Canfield and Councilor Ripma with a "Rainbow Splendor" statue from Caswell Gallery.

The Council presented Mayor Thalhofer with a plaque that read, "City of Troutdale presents to Paul Thalhofer, in honor of your 29 years of dedicated service to the City of Troutdale, including more than 15 years as Mayor, the people of Troutdale thank you". The Council also presented Mayor Thalhofer with a "Rainbow Splendor" statue from Caswell Gallery and a jacket with the City of Troutdale logo.

Councilor Daoust stated with all of the historical things that Paul mentioned in his State of the City Message, there is a human side to Paul. Paul's human side is a combination of a fighting Irishman and a soft teddy bear. He has always had a soft heart for people's opinions, so much so that we sat here for hours listening to them. He has also been a real personal friend of mine. Paul has taken an interest in my daughters and their activities. He always talks to them on the phone and asks them how they are doing. That means a lot to me and that is the real human side of Paul. He has a great signing voice. He is always here. As Council President I only got to run 1 meeting in all of the years that I have been in the position to take over if he wasn't here. It is going to be hard to fill your size 16 shoe. We all know that he is a University of Oregon Duck fan, but we also know that he knows pretty much the name of every sports team in Oregon, if not beyond Oregon. It is amazing how Paul can recall the name of a high school football team that is out in the middle of nowhere and how well they are doing. Paul knows everybody in Troutdale. When he is in Safeway he is

always saying hi to everybody. In the few occasions when I have walked into Safeway when Paul was in there he gets real territorial and says this is my store, what are you doing in here. There is a competitive edge with Paul also. I am really going to miss you.

Councilor Thomas stated for me the Mayor has been the representative of Troutdale. He has lived and breathed Troutdale for as long as I have known him. He has always been the person that I can talk to whether we agreed or disagreed, he would always listen. If I ever needed a sports quote for anywhere in the country I could always call Paul. One of the other things I have noticed over the years is that Paul never really wants to recognize his birthday, so we thought tonight that we would have a birthday party for you.

Councilor Ripma stated Paul and I go way back. We have fought battles over the years. He is a boxer, basketball and football player; all of the things I am not. It is amazing, and you might not think so after all of these meetings where we have battled it out, but we usually get together after the meeting and have a good time. That is just the way Paul is. He is very fair, even when he is wrong. I moved here twenty years ago and I really have known two mayors, Sam Cox and Paul Thalhofer. I didn't think that there would be another Mayor that would equal the love for Troutdale that Sam Cox had, but Paul absolutely does and one better, he served longer. It has been a privilege to know you and to work with you on this Council.

5. ADJOURNMENT:

MOTION: Councilor Ripma moved to adjourn. Seconded by Councilor Kyle Motion passed unanimously.

Meeting adjourned at 10:15pm.

Jim Kight, Mayor

Approved February 10, 2009

ATTEST:

Debbie Stickney, City Recorder