



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2010-004

A RESOLUTION CONSENTING TO THE TRANSFER OF CONTROL OF THE FRANCHISEE AND OF THE CABLE FRANCHISE GRANTED TO VERIZON NORTHWEST, INC. TO FRONTIER COMMUNICATIONS CORPORATION, WITH CONDITIONS

WHEREAS, the Metropolitan Area Communications Commission, hereinafter "MACC," is an intergovernmental commission formed under ORS Chapter 190, with the membership of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard and Tualatin; and

WHEREAS, MACC and the City of Sherwood, hereinafter "City," located in Washington County, have agreed to cooperate in the review of complex cable franchising matters, including the transfer of control that is the subject of this Resolution, in order to reduce costs and assure that the City has the fullest information available to it in such cases; and

WHEREAS, in addition MACC and the City have agreed to cooperate with the Mt. Hood Cable Regulatory Commission (MHCRC) representing the cities of Fairview, Gresham, Troutdale and Wood Village in the matter of this transfer, toward these same efficiency objectives; and

WHEREAS, Verizon Northwest, Inc., a subsidiary of Verizon Communications, Inc. is the Franchisee under a Cable Franchise Agreement granted by Sherwood via Ordinance No. 2007-008 on August 21, 2007 for a period of 15 years; and

WHEREAS, on June 1, 2009 the City received a Federal Communications Commission Form 394 Application by which Verizon Communications, Inc., the corporate parent of Franchisee, and Frontier Communications Corporation ("Frontier" or "Transferee") requested approval from the City of a proposed transfer of control of the Franchisee and its Franchise to Frontier; and

WHEREAS, following the completion of the transactions constituting the transfer of control, Frontier would assume control of the local cable operations of the Franchisee, but must also secure certain other facilities and agreements to provide a comparable cable service to that currently provided by Franchisee; and

WHEREAS, Federal law and Section 11 of the Franchises authorize the City to review any proposed transfer of control, including the proposed transaction as described in the Application and as clarified in answers to questions presented by the City to the Franchisee and Frontier to determine the impact on the Franchisee's ability to perform the Franchise obligations based on the legal, financial, and technical qualifications of the Transferee; and

WHEREAS, Section 11 of the Franchises also authorizes the City to condition approval of a transfer upon such terms and conditions as they deem reasonably appropriate within the legal, financial, and technical framework provided by the Franchise and federal law; and

WHEREAS, the City in cooperation with MACC and MHCRC has reviewed the materials provided by the Franchisee and Frontier in the Application and in response to a Request for Information (RFI) originally provided by the City to the companies on June 25, 2009 and subsequently revisited and further investigated on numerous occasions through October 30, 2009; and

WHEREAS, MACC conducted a duly noticed public hearing concerning the proposed transfer on November 20, 2009 wherein it received public testimony and written communications; and

WHEREAS, the review now being completed except for certain issues necessarily addressed in a prospective manner through conditions, the MACC Commission adopted Resolution No. 2009-05 recommending that its members approve the Application, provided those conditions and assurances are obtained from the companies, which Resolution is attached hereto as Exhibit A; and

WHEREAS, the City Council deems it to be in furtherance of the public interest and the welfare of its citizens to consent to the transfer request, subject to appropriate conditions.

Now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SHERWOOD:

Section 1. Legal, Technical and Financial Qualifications of the Transferee.

The findings of MACC in the attached Exhibit A demonstrate that the Franchisee and Transferee have the necessary legal, technical and financial qualifications to perform the required duties under the Franchise Agreement, provided certain conditions are imposed on the proposed transfer of control. Those findings are hereby adopted by the City Council as if fully incorporated herein. The Council further finds that specific conditions of the transfer approval are warranted and should be adopted for the benefit of the City and its residents and businesses.

Section 2. Consent to the Transfer of Control.

The City Council hereby consents to the transfer of control of the Franchisee and of the Franchise as set forth in the Federal Communications Commission Form 394, subject to the conditions set forth in Section 3, below.

Section 3. Conditions to the Transfer of Control.

The approval of the proposed transfer of control shall not take effect until such time as each of the following conditions is met:

1. The Verizon/Frontier merger transaction must close with all material terms substantially consistent with the Merger Agreement, as well as the information provided to the City of Sherwood, to MACC or to the Mount Hood Cable Regulatory Commission (MHCRC) in public documents and responses to Requests for Information submitted by the City of Sherwood, MACC and the MHCRC.

2. The Verizon/Frontier merger transaction is approved by all required federal agencies and the Oregon Public Utility Commission.

3. Franchisee, under the control of Transferee, agrees to remedy any franchise non-compliance issues, including any underpayment of franchise and PEG fees by Verizon, regardless of whether such non-compliance issues are discovered prior to or following the close of the Transfer of Control. Franchisee, under the control of Transferee, shall remain responsible for any and all Franchise requirements (including but not limited to payment of Franchise fees and other amounts due under the Franchise, and indemnification of the Grantor as provided in the Franchise) and non-compliance issues under the Franchise or any obligation that may now exist or may later be discovered to have existed during the term of the Franchise, even if prior to the closing of this Transfer.

4. Franchisee shall comply with all valid local laws, agreements, and Franchise requirements consistent with applicable federal and state law including all terms of the Franchise Agreement. In all respects and without exception, Franchisee, under the control of Transferee, agrees to continue to abide by all terms of the existing Franchise and acknowledges that the transfer of control will not affect, diminish, impair or supersede the binding nature of the Franchise and any other valid ordinances, resolutions, and agreements applicable to the operation of the cable system in the City of Sherwood.

5. In addition to the current obligations of the Franchise Section 13.6, "Letter of Credit," Franchisee, under the control of Transferee, provides and maintains an irrevocable letter of credit in a form acceptable to the City in the amount of \$25,000 to secure the payment of Franchise fees and any penalties throughout the remaining franchise term.

6. Verizon and Frontier have paid to the City all reasonable, documented external costs up to five thousand dollars (\$5,000) incurred as a result of review of the transfer of control application.

7. Transferee provides current contact information for notice recipients under Section 14.5 of the Franchise.

8. Transferee provides a new Exhibit D, "Franchisee Parent Structure."

9. The City's consent to the transfer of control shall not be construed to constitute a waiver or release of any rights they may have under the Franchise and any separate written agreements with the Franchisee and Franchisee's lawful successors.

10. During the week ending January 15, 2010, Transferee will provide the City with a progress report of its acquisition of content, including a listing of national and local content providers and their associated channels, and video on demand providers, with which: (1) Transferee has signed agreements; (2) Transferee has pending agreements being negotiated; and (3) Transferee is pursuing agreements. By March 31, 2010, Transferee shall have delivered certification by a Corporate officer that it has acquired rights to distribute linear video, broadcast, and video on demand programming content from vendors, which rights: (a) include at least 75% of the channels provided by Franchisee on November 1, 2009; (b) include all nine Portland area local broadcasters; and (c) include commitments to carrying the majority of this content for a period of not less than two years. Transferee will provide the City with a complete projected channel lineup no later than 30 days prior to the close of the transaction.

11. Transferee acknowledges these conditions of approval of the transfer of control by signing as indicated below within 30 days from the date of the Council's adoption of this Resolution.

12. This approval shall be valid until the Verizon/Frontier merger's Hart-Scott-Rodino Approval ("HSR") expires. Currently, the HSR expires on September 1, 2010. If the merger is not completed prior to the expiration of the HSR, Verizon and Frontier shall meet with City

representatives and advise them on the status of the merger. The City shall consider the information provided by Verizon and Frontier and consider whether to extend the previously granted approvals. Any such extension shall not be unreasonably withheld.

13. Transferee has provided a separate signed statement to the City regarding its intention not to invoke Section 13.9 of the Franchise.

14. Franchisee, under Transferee's control will provide the following system and service requirements, in compliance with the Franchise, and will maintain them throughout the term of the Franchise:

- a. As required by Section 3.3 of the Franchise, one cable service outlet activated for Basic Cable Service free of charge to the specified city-owned buildings within the Service Area, including: the City Hall/Public Library located at 22560 SW Pine Street; the Public Works building located at 15527 SW Willamette Street; and the Senior Center located at 21907 SW Sherwood Blvd.
- b. As required by Sections 6.1.2 and 6.1.4 of the Franchise, one dedicated channel for public, educational and government (PEG) access programming, on the basic service tier.
- c. As required by Section 6.2.1 of the Franchise, provide, install and maintain the equipment necessary for transmitting PEG signals to subscribers at one of three locations identified in the Franchise. As of the date of this Resolution, the equipment to enable distribution of the PEG programming has been installed at the City Hall/Public Library located at 22560 SW Pine Street. In addition, Franchisee has agreed at Section 6.2.1 of the Franchise to provide, install and maintain the equipment necessary for transmitting a PEG signal from one additional location following 180 days' notice from the City, and subject to certain conditions set forth in the Franchise..

Section 4. Authorization to Execute and Obtain Written Acceptance.

The Mayor is authorized to execute and submit a copy of this Resolution to the Franchisee for execution by the Franchisee's duly authorized representative.

Section 5. Effective Date.

This Resolution shall be effective upon its adoption by the Council and approval by the Mayor.

Introduced and adopted this 5th day of January, 2010.



Keith Mays, Mayor

ATTEST:



Sylvia Murphy, CMC, City Recorder

APPROVED AS TO FORM:

Legal counsel

ACCEPTED AND AGREED TO:

Ann Burr, Chairman and General Manager, Frontier Communications