

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 01-113

Authorizing Termination of the Cable Franchise Agreement with RCN Telecom Services of Oregon, Inc. and Releasing RCN from its Obligations Under the Franchise

The Multnomah County Board of Commissioners Finds:

- a. The Mt. Hood Cable Regulatory Commission (MHCRC), created by Intergovernmental Agreement dated December 24, 1992 (IGA), carries out cable regulation and administration on behalf of Multnomah County (County) and the Cities of Fairview, Gresham, Portland, Troutdale, and Wood Village (Jurisdictions). The MHCRC acts in an advisory capacity to the Jurisdictions in connection with any cable franchise decisions.
- b. As provided in the MHCRC IGA, Section 4.B., the County reserves full authority to accept, reject, or modify proposed franchise agreements for cable, broadband or other services recommended by the MHCRC.
- c. On September 7, 2000, by Resolution 00-147, the Board approved a Cable Franchise Agreement with RCN Telecom Services of Oregon, Inc. (RCN) for construction, operation and maintenance of a cable system within the Jurisdictions, including construction of a cable plant in the City of Portland, as recommended by MHCRC.
- d. Due to changing economic conditions and its own business plans, RCN has requested that its franchises with the Jurisdictions be terminated, that it be released from its obligations under the franchises and that the Jurisdictions and MHCRC forego certain legal action against RCN for its withdrawal from the Jurisdictions.
- e. On July 10, 2001, by Resolution No. 2001-06 attached as Exhibit A, MHCRC recommended that the Jurisdictions terminate the franchises, release RCN from its obligations and forego certain legal actions against RCN, under specific conditions. These conditions include paying certain moneys owed MHCRC under agreements with the Jurisdictions, releasing the MHCRC from certain confidentiality requirements, and submitting its formal request for franchise termination to MHCRC and the Jurisdictions. A copy of RCN's formal request is attached as Exhibit B.
- f. It is in the interest of the County to help provide for an orderly exit of RCN from the Jurisdictions, and RCN has met the conditions recommended by the MHCRC.

The Multnomah County Board Of Commissioners Resolves:

1. Termination of Franchise. The County approves termination of the MHCRC/RCN Franchise between RCN Telecom Services of Oregon, Inc., and the Jurisdictions, adopted by County Resolution 00-147, and release of RCN from all obligations under the franchise. The County will forego pursuing any penalty or other remedies available under the franchise, including drawing upon RCN's performance bonds for RCN's failure to meet its construction schedule, complete construction, or otherwise fully perform under franchise granted to RCN by the County.
2. Agreement to Forego Certain Legal Action. The County shall not pursue any claims for damages associated with RCN's withdrawal from promised operations within the County.
3. This resolution is effective July 24, 2001.

ADOPTED this 23rd day of August 2001.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By  _____
Thomas Spensler, County Attorney

Before the
Mt. Hood Cable Regulatory Commission
1120 SW Fifth Ave., Room 704
Portland, OR 97204

Recommend to the Jurisdictions that RCN, at RCN's request, be released from existing franchises in the Jurisdictions, and be granted a temporary, limited, non-renewable permit to facilitate RCN's transfer of assets in Portland, in exchange for certain considerations from RCN.

Resolution No. 2001-06
Adopted by the Commission
July 10, 2001

Section 1. Findings

- 1.1 The Mount Hood Cable Regulatory Commission ("Commission" or "MHCRC") was created by Intergovernmental Agreement (dated 12/24/1992) ("IGA") to carry out cable regulation and administration on behalf of Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village (the Jurisdictions"). Among other things the Commission acts in an advisory capacity to the Jurisdictions in connection with the granting or termination of cable franchises. The Jurisdictions themselves have authority in these matters; and have agreed to consider the advice and recommendations of the MHCRC and to take no action in connection with these matters until the Commission has had a prior opportunity to consider them.
- 1.2 RCN holds cable franchises in the Jurisdictions of Multnomah County and the cities of Gresham, Troutdale, Fairview, and Wood Village, containing certain requirements and authorizations connected with constructing, operating and maintaining a cable system. The franchises are due to expire in 2010, with possible extension under certain conditions. RCN also holds a temporary permit, due to expire July 19, 2001, under which the company has constructed cable plant in the streets of the City of Portland.
- 1.3 Due to changing economic conditions and its own business plans, RCN has requested to be released from all its obligations under its existing franchises in the Jurisdictions, and has expressed to City officials and Commission staff its intent to forego any operation of its plant in City of Portland. RCN has also requested that the Jurisdictions and the Commission forego certain legal action against the company connected with the company's withdrawal from the Jurisdictions, and that the City of Portland assist in certain ways to facilitate the orderly transfer of RCN assets to a new owner. In exchange, RCN offers to pay the MHCRC certain moneys owed under its agreements with the Jurisdictions, post a performance bond, and make certain written representations to the Jurisdictions.

- 1.4 In the light of existing economic conditions affecting overbuilders generally, and RCN in particular, RCN's request for release from its obligations and associated requests are understandable, and their offer of considerations in exchange is reasonable. It is in the interest of the Jurisdictions and the Commission to facilitate the orderly exit of RCN under reasonable terms.

NOW, THEREFORE, the Commission resolves:

Section 2.

- 2.1 The Commission recommends that the Jurisdictions formally act to acknowledge and accept RCN's request for release from its franchise obligations, as well as certain other requests including a modification or replacement of the revocable permit granted by the City of Portland, under certain conditions. Thus, subject to the complete fulfillment by RCN of the conditions specified in Section 2.2 below it is recommended to the Jurisdictions that:
 - 2.1.1 The Jurisdictions of Multnomah County and the cities of Gresham, Fairview, Troutdale and Wood Village should agree to release RCN from its obligations under existing, initially granted franchises; and forego pursuing any penalty or other remedies available under the franchise, including drawing upon RCN's performance bonds, for RCN's failure to meet its construction schedule, complete construction, or otherwise fully perform under franchises granted to RCN by these Jurisdictions.
 - 2.1.2 The Jurisdictions should not pursue any claims for damages associated with RCN's withdrawal from promised operations within the Jurisdictions.
 - 2.1.3 The City of Portland should grant a temporary, limited, non-renewable permit, beginning on July 20, 2001 and having a term of no more than Ninety (90) days, to provide RCN with additional time for orderly disposition of its existing plant constructed within Portland's streets, and the authority to maintain such facilities during that time. Such permit should explicitly prohibit a) any construction of additional facilities in the Streets by RCN, and b) any operation of the plant or provision of services by RCN. This permit should be modified to address the limited grant of authority, both durationally and operationally.
 - 2.1.4 The Jurisdictions should cooperate with RCN, if requested, to help facilitate a timely transfer of ownership of existing RCN plant.
- 2.2 The Commission recommends to the Jurisdictions that the actions described in Section 2.1 be undertaken only upon complete fulfillment of the following actions by RCN:
 - 2.2.1 Submission of a written request, addressed to the Jurisdictions, acknowledging the company's change in business plans and asking for the Jurisdictions to release RCN from the existing RCN franchises in the MHCRC Jurisdictions. The written request should also acknowledge that the release shall be without recourse for RCN against any of the Jurisdictions for actions taken in either issuing or terminating RCN's franchise.

- 2.2.2 Payment to the MHCRC, at the earliest possible time but no later than 5:00 p.m. on July 17, 2001, of the sum of Fifty Thousand Dollars (\$50,000) in fulfillment of the agreement signed by RCN.
- 2.2.3 Posting and maintenance of a performance bond, in the amount of Two Hundred Thousand Dollars (\$200,000), running to the City of Portland, in a form acceptable to the Portland City Attorney's Office, so long as RCN continues to own facilities in City rights of way. RCN shall have the bond in place to coincide with the issuance of the Portland City Council's approval of a replacement for the existing revocable permit, as referred to in Section 2.1.3 above.
- 2.2.4 Release of the MHCRC, in writing, at the earliest possible time but no later than 5:00 p.m. on July 17, 2001, from any requirements of confidentiality regarding any maps and other records in the possession of the MHCRC or the Jurisdictions pertaining to RCN plant construction. RCN shall also provide copies of any "as-built" maps for any Facilities actually placed in the Streets of any Jurisdiction by that time.
- 2.3 The Commission directs staff to prepare all necessary documents to facilitate the implementation of the recommendations in this Resolution.

RESOLVED BY THE COMMISSION on July 10, 2001

Sue Dicile, Chair

Reviewed by:

Benjamin Walters, Legal Counsel

COPY



David A. Hankin
Vice President
Regulatory & Government

1400 Fashion Island Blvd., Suite 100
San Mateo CA 94404
(650) 212-8010
Fax (650) 212-8009

July 10, 2001

Mary Beth Henry, Acting Director
Mount Hood Cable Regulatory Commission
1120 SW Fifth Avenue, Room #704
Portland OR 97204

Re: Multnomah County, and the cities of Fairview, Gresham, Troutdale & Wood Village

To: Multnomah County, and the cities of Fairview, Gresham, Troutdale & Wood Village:

RCN holds franchises in Multnomah County and the cities of Fairview, Gresham, Troutdale, and Wood Village ("Jurisdictions"), to construct, operate and maintain a cable system.

The franchises were granted by the Jurisdictions at the request of RCN. However, RCN's business plans have changed, and the company does not intend to construct or operate a system in the Jurisdictions. RCN has worked with the Mount Hood Regulatory Commission (the "Commission") to arrange for an orderly exit from the Jurisdictions. Accordingly, pursuant to Resolution No. 2001-06, Adopted by the Commission on July 10, 2001, RCN requests that the Jurisdictions terminate the existing franchises with RCN, and release RCN from all obligations under the franchises.

RCN acknowledges that such termination and release shall be without recourse by RCN against any of the Jurisdictions for actions taken in either issuing or terminating RCN's franchise.

Sincerely

A handwritten signature in cursive script that reads "David Hankin".

David Hankin