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Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

REPORT AND RECOMMENDATION

To:	**Elected Officials** **Multnomah County and the Cities of Fairview, Gresham, Troutdale and Wood Village**
From:	**Mt. Hood Cable Regulatory Commission**
Re:	**Comcast Cable Franchise Renewal**
Date:	**October 24, 2011**

MHCRC RECOMMENDATION

Having carefully considered this matter, and having completed a substantial community technology needs ascertainment and lengthy franchise negotiations with Comcast on your behalf, the Mt. Hood Cable Regulatory Commission (MHCRC) respectfully recommends that Multnomah County and the Cities of Fairview, Gresham, Troutdale and Wood Village approve a renewal franchise with Comcast consistent with the recommended franchise attached to this memorandum, together with all exhibits, letter agreements, and accompanying documents. Final action by the elected bodies of each MHCRC jurisdiction should be taken prior to the December 31, 2011 expiration of the extended term of the current franchise agreements.

The MHCRC has formally arrived at this recommendation by adopting MHCRC Resolution No. 2011-04 (attached) recommending and transmitting to Multnomah County and the Cities of Fairview, Gresham, Troutdale and Wood Village a cable franchise renewal agreement with Comcast of Illinois/Ohio/Oregon, LLC.

ANALYSIS AND DISCUSSION OF KEY ELEMENTS OF RENEWAL

1. Term
Applicable provision: Franchise §1.2
Discussion: The franchises are renewed for a 10-year term, beginning January 1, 2012 and expiring December 31, 2021.

2. Competitive Neutrality
Applicable provision: Franchise §1.4(B)
Discussion: The proposed renewal is competitively neutral when compared with current cable services franchises with the MHCRC Jurisdictions, and specific provisions are included addressing franchise modifications in the event MHCRC Jurisdictions issue subsequent cable services franchises.

3. Gross Revenues Definition (for purposes of Franchise and PEG/I-Net fees)

Applicable provision: Franchise §3.27
Discussion: Under applicable definitions and Jurisdiction interpretations of the expiring franchise, Comcast and its predecessors included in Gross Revenues, upon which franchise and PEG/I-Net fees are calculated, all amounts received from programmers for launch fees and marketing reimbursements, and did not exclude, deduct or offset advertising agency or sales representative commissions or other advertising sales expenses. This is consistent with longstanding MHCRC and Jurisdiction interpretations (including our audit interpretations) of the Gross Revenues definition upon which franchise and PEG/I-Net fees are calculated. The Gross Revenues definition is substantively unchanged in the proposed renewal franchise apart from modest revisions intended to update language to align with related Cable Act and franchise terminology and acknowledging that Comcast uses the accrual method of accounting consistent with Comcast's understanding of Generally Accepted Accounting Principles (GAAP). As noted, the Gross Revenues definition of the proposed renewal franchises is unchanged in substance from the current East County franchise with the Jurisdictions. In recommending the renewal franchise to the Jurisdictions, the MHCRC relies upon a belief that Comcast will continue during the term of the renewed franchise to include in franchise fee payments and PEG/I-Net fee calculations all amounts Comcast receives from programmers for launch fees and marketing reimbursements in Gross Revenues upon which franchise and PEG/I-Net fees are calculated. The MHCRC's recommendation further relies upon a belief that Comcast will continue its existing practice of not excluding or deducting advertising agency or sales representative commissions, or other advertising sales expenses from Gross Revenues upon which franchise and PEG/I-Net fees are calculated. Such a change would be a substantial deviation from current practices, and would have a material impact upon Gross Revenue calculations.

4. Public, Educational and Governmental (PEG) Access Provisions
Applicable provisions:
- Franchise definitions §3.2, 3.3, 3.4, 3.19 among others
- Franchise §5, generally
- Franchise Exhibit B Hardwired Live Origination sites
- PEG letter agreement

Discussion: Key commitments are retained for MetroEast Community Media and local programming resources consistent with the current franchise. A number of service improvements are also provided, including a path to convert all community channels to High Definition format (Franchise §5.2); continuation of local program listings in web based program guides as well as subscriber set-top boxes (PEG Letter Agreement ¶A); the availability of community programming on Comcast's Video-on-Demand platform ((PEG Letter Agreement ¶B); constraints on arbitrary channel reassignment ((PEG Side Letter ¶C); and protection of existing interconnects and live programming origination sites, including city halls and County Commission chambers (Franchise §5.4 and 5.5 and Franchise Exhibit B).

5. Institutional Network (I-Net)
Applicable provisions:
- Franchise definitions §3.19, §3.32 – §3.36, among others
- Franchise §6, generally
- Franchise Exhibit C – I-Net Assets
- I-Net letter agreement
- Revised Comcast-City of Portland (BTS) agreement

Discussion: The Institutional Network (I-Net) provides data and Internet services and connectivity to all schools and libraries, Mt. Hood Community College and several public safety, courts, elections and other public agencies throughout Multnomah County (a total of about 290 sites). Continuation of I-Net requirements was one of the most complex areas to successfully negotiate. Final language agreement was reached on applicable I-Net provisions in the Franchise, the I-Net letter agreement, and the BTS-Comcast I-Net operating agreement (to be separately considered by the City of Portland). Key I-Net commitments (including services and rates) commensurate with the current franchise are retained: A substantial upgrade of the I-Net is funded (I-Net side letter ¶A); 1/3 of the PEG/I-Net funds, currently retained by Comcast, will be directly paid to and publicly managed by the MHCRC (Franchise §7.1); and I-Net operating arrangements and the I-Net interconnection with the City of Portland IRNE system are clarified and contractually secured (Franchise §6; Exhibit C and I-Net Letter Agreement; revised Comcast-BTS agreement, separately considered by the City of Portland). The MHCRC agreed to one concession to limit future higher education users to public community colleges only, however, this does not effect any current I-Net users (definition of §3.33 (I-Net Institution)).

6. PEG/I-Net Capital Fund
Applicable provision: Franchise §7
Discussion: The current PEG/I-Net fund provides for the capital needs of MetroEast Community Media, the Community Access Capital Grant, and the Institutional Network. The proposed renewal franchise retains the PEG/I-Net fund (3% of company's gross revenues) with one positive change: The 1/3 of the current funds dedicated only to I-Net infrastructure and retained by Comcast under the current franchises will be directly paid to and publicly managed by the MHCRC under the renewed franchises. This will provide greater flexibility on the fund's uses and improve the ability of the MHCRC to respond to I-Net users' needs over the next ten years.

7. Cable System Upgrade
Applicable provision: Franchise §9
Discussion: No committed cable system upgrade is included in the renewed franchise; however in the last portion of the renewed franchise term, the Jurisdictions may conduct a technology assessment to determine determining cable system technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest Comcast cable systems and include this as baseline information in the ascertainment of cable-related community needs prior to considering franchise renewal for an additional term. This was a significant area of compromise necessary in the view of MHCRC staff in order to reach an overall agreement.

8. Standard Installations and Line Extensions
Applicable provisions: Franchise §8.2 and §8.3
Discussion: The formula for standard residential subscriber installations is established at 125 feet from the street to a home for an installation at standard rates. This is a reduction from the current 175 feet for a standard installation. Cost-sharing between the subscriber and Comcast applies for installations greater than 125 feet for drop extensions. The renewal franchise also includes a formula for build out in areas added to the Urban Growth Boundary; density requirements to extend the cable system in new developments; and a substantial credit (up to 50x the Expanded Basic rate or more than $3,000) to a potential subscriber if line extensions are necessary to serve a residence.

9. Use of Current I-Net Fund End-Balance and Future Undedicated Fund for Line Extensions
Applicable provisions:

- Franchise §7.7

- I-Net side letter ¶C(2)

Discussion: Additional line extension aid-to-construction capital funds for Comcast are provided both under current franchise end-balance I-Net funds (which Comcast retains and may be applied after August 31, 2013 after the I-Net upgrade is completed) and if any unencumbered, undedicated I-Net funds exist at specified franchise intervals (2015 and 2020), upon development and submittal of necessary documentation.

10. Consumer Protection/Customer Service & Regulatory Reporting

Applicable provisions:

- Franchise §10
- Franchise Exhibit D Customer Service Interpretations

Discussion:

Critical customer service and consumer protection provisions are retained and existing MHCRC Jurisdiction customer service ordinances and Jurisdiction legislative authority in this area is preserved. However, a major compromise is the allowance (Franchise Exhibit D) of an interpretation of the Jurisdictions' telephone responsiveness standard which aligns with the substance of the current Verizon/Frontier franchise. This interpretation provides Comcast the same wide latitude as Verizon/Frontier to meet the standard by including in the measurement customer calls to Comcast's automated menu system instead of only to a live customer service representative. This was a significant area of compromise necessary in the view of MHCRC staff in order to reach an overall agreement.

11. Franchise Violations and Remedies

Applicable provision: Franchise §19

Discussion: The financial scope of remedies for franchise violations under the renewal franchises are capped and significantly constrained, aligning remedies more with the current Verizon/Frontier cable franchise model and substituting liquidated damages. This was a significant area of compromise necessary in the view of MHCRC staff in order to reach an overall agreement.

12. Financial Security and Guarantor

Applicable provisions: Franchise §14.3

Discussion: In lieu of an overall parental guaranty, the renewal franchise compromises by means increasing Comcast's required performance bond from $400,000 (current franchise) to $500,000 (renewed franchise) and by providing that the ultimate parent (Comcast Communications, Inc.) may provide the guaranty (in lieu of bond). This was a significant area of compromise necessary in the view of MHCRC staff in order to reach an overall agreement.

BACKGROUND

Beginning in 2008, the MHCRC, on behalf of all member MHCRC Jurisdictions, conducted a cable franchise renewal process pursuant to the applicable provisions of federal law 47 U.S.C. §546. The process was authorized by MHCRC Resolution No. 2008-02 (adopted April 21, 2008). Pursuant to this process, a community needs ascertainment report ("Your Vo!ce, Our Communications Technology") was prepared in April, 2010 for review and consideration by the MHCRC, the Jurisdictions, Comcast and the citizens, cable subscribers and stakeholders of MHCRC communities. The ascertainment report was for the purpose of reviewing Comcast's performance under the existing cable franchise agreements (which Comcast began operating in 2002), and identifying cable-related needs and interests of the community which should be met in a renewed franchise agreement, taking into account the cost of meeting such needs and interests. Comcast was at all relevant times provided notice of the development of the ascertainment report and was provided a reasonable opportunity to comment on the results of the report. The ascertainment report and associated findings remains posted on the MHCRC website: http://www.mhcrc.org/yourvoice.html .

Based on the findings of the community needs ascertainment, MHCRC staff subsequently began informal franchise renewal negotiations with Comcast representatives, while mindful that the MHCRC on behalf of the Jurisdictions could elect to commence a formal administrative proceeding pursuant to 47 U.S.C. §546. Negotiations continued through September, 2011 when an overall agreement in concept was reached by MHCRC and Comcast negotiators on most key elements of a renewed Comcast franchise, including community needs and public benefit elements,. On the basis of this agreement in concept, the MHCRC held a public hearing on September 26, 2011, on the public benefit elements of the proposed renewal franchise. Negotiations continued through October 19, 2011, concerning mutually agreeable final language of the proposed renewal franchise, along with exhibits, letter agreements and accompanying documents, including a agreed upon revised contract between Comcast and the City of Portland's Bureau of Technology Services for Institutional Network Services required under the renewed franchise.

CONCLUSION

It is the MHCRC's belief that the proposed renewal franchise, along with exhibits, letter agreements and accompanying documents, is generally consistent with the MHCRC's community needs ascertainment and adequately addresses the future cable-related needs and interests of Multnomah County and the Cities of Fairview, Gresham, Troutdale and Wood Village during the proposed renewal franchise term (ten years), taking into account the cost of meeting such needs and interests. Therefore, the MHCRC recommends that the elected bodies of each of these MHCRC Jurisdictions consider and take final action approving the proposed renewal franchise (and associated exhibits and letters of agreement) prior to the scheduled expiration of the current franchise term on December 31, 2011.

Attachments:

- Recommended model form of ordinance/resolution to adopt Comcast renewal franchise
- Proposed Comcast renewal franchise for Multnomah County and the Cities of Fairview, Gresham, Troutdale and Wood Village (together with exhibits, side letters and recommended form of acceptance)
- MHCRC Res. 2011-04 (adopted by MHCRC October 24, 2011)