



MEMORANDUM CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

FROM: Sherilyn Lombos, City Manager

DATE: January 27, 2014

SUBJECT: Work Session for January 27, 2014

6:30 p.m. (20 min) – Comcast Franchise Renewal Update. Tualatin is a member of the Metropolitan Area Communications Commission (MACC), an intergovernmental agency which administers and regulates cable television franchises for fourteen cities and Washington County. MACC currently administers Comcast's cable television franchises on behalf of its members. The current Comcast Franchise agreement expires on January 31, 2014, and MACC has been in the process of negotiating a renewal with Comcast over the past year. A staff report from MACC is attached as Attachment A to this report explaining the details of the negotiations. MACC staff will make a presentation at Council Work Session on January 27, 2014 to explain the need for extending the agreement for one more year to allow more time to negotiate a renewal.

6:50 p.m. (5 min) – Council Meeting Agenda Review, Communications & Roundtable. Council will review the agenda for the January 27th City Council meeting and brief the Council on issues of mutual interest.



MEMORANDUM

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Sara Singer, Deputy City Manager

DATE: 01/27/2014

SUBJECT: Comcast Cable Franchise Term Extension

ISSUE BEFORE THE COUNCIL:

The Metropolitan Area Communications Commission (MACC) Board of Commissioners unanimously passed a resolution recommending its fifteen member jurisdictions extend the current Comcast Franchise terms until December 31, 2014, in order to provide time to complete the ongoing process to renew the Comcast Franchise.

DISCUSSION:

Tualatin is a member of the Metropolitan Area Communications Commission (MACC), an intergovernmental agency which administers and regulates cable television franchises for fourteen cities and Washington County. MACC currently administers Comcast's cable television franchises on behalf of its members. The current Comcast Franchise agreement expires on January 31, 2014, and MACC has been in the process of negotiating a renewal with Comcast over the past year. A staff report from MACC is attached as Attachment A to this report explaining the details of the negotiations. MACC staff will make a presentation at Council Work Session on January 27, 2014 to explain the need for extending the agreement for one more year to allow more time to negotiate a renewal. The resolution extending the agreement is on the Council agenda under Consent.

MACC staff has prepared a list of questions and answers regarding the proposed extension of the franchise term (see Attachment B).

Attachments: [Attachment A: MACC Staff Report](#)
[Attachment B: Questions & Answers About Proposed Extension](#)
[Attachment C: MACC Resolution 2013-08](#)

REPORT TO MACC MEMBER JURISDICTIONS RECOMMENDATION COMCAST CABLE FRANCHISE TERM EXTENSION DECEMBER 2013

Your jurisdiction is a member of the Metropolitan Area Communications Commission (MACC), an intergovernmental agency which administers and regulates cable television franchises for fourteen cities and Washington County. MACC currently administers Comcast's cable television franchises (Comcast Franchise) on behalf of its members, as well as a Frontier Cable Franchise for eleven jurisdictions where they offer those services.

MACC Recommendation – On December 11, 2013, the MACC Board of Commissioners (Commissioners) unanimously passed a resolution (copy attached as Exhibit A) recommending its fifteen member jurisdictions extend the current Comcast Franchise terms until December 31, 2014, in order to provide time to complete the ongoing process to renew the Comcast Franchise.

Background

Comcast was granted a 15 year renewal of its cable television franchise in 1999 (then held by TCI Cable) – that Franchise expires on January 31, 2014. On March 9, 2011 Comcast requested MACC and its member jurisdictions renew that Franchise. That request for renewal from Comcast triggered a 3-year renewal process governed by Federal Law (47 U.S.C. 546). That Law sets forth a prescribed Formal Renewal process which requires the completion of an extensive community needs assessment by the Franchising Authority (MACC) and from that assessment the development of a Request for Renewal Proposal (RFRP) which contains a proposed new cable franchise agreement based on those community needs. After development of the RFRP by MACC, it is provided to Comcast which then has a set period of time in which to respond. After receiving and evaluating that response, MACC would hold hearings to determine whether Comcast's response "adequately fulfills the needs of the MACC communities taking into consideration the costs thereof." The Formal Process does not preclude additional company/MACC discussions, but it does place the process in a time-limited structure. After Comcast's response, MACC would make a recommendation to its member jurisdictions to either grant Comcast a renewal based on its response, or deny a renewal due to Comcast's failure to meet the established needs. Either recommendation by the Commission would go back to the jurisdictions (no different than this request to extend the franchise term) where each member would vote to accept or reject the Commission's recommendation.

The Federal Law also provides for informal negotiations that typically are used to reach agreement on a new franchise. Informal negotiations follow many of the Formal Process steps (i.e., development of a needs assessment), but are conducted in the manner like most negotiations, and with considerable more flexibility than the more structured Formal Process.

MACC/Comcast Informal Renewal Process – After completing its needs assessment and presenting it to the MACC Board of Commissioners in January 2013, the MACC staff was directed to begin negotiations with Comcast under the Informal Process. Actual negotiations between MACC staff and Comcast local government affairs staff members began in February 2013. At that time the parties agreed to a series of negotiation sessions (one about every two weeks) through July/August with the plan for the final proposed franchise agreement to be brought back to the Commission in September. This mutually-agreed upon plan expected a Commission recommendation to the jurisdictions that would be presented to each jurisdictional governing body between November and early January. This timeline would allow the new franchise to be in place by the expiration of the current agreement. MACC and Comcast also agreed to tackle the more difficult franchise issues up front, leaving the other sections of the franchise for the later part of the proposed negotiations time line.

At the Commission's June 5th meeting, staff reported delays it was experiencing in getting Comcast to provide timely "red-line" sections in advance of scheduled sessions and that more negotiation sessions had been added to handle these delays. The Commission decided to vest its Executive Committee (the Commission's 3 officers) to act on its behalf to monitor the progress of negotiations and to invoke the Formal Renewal Process if problems continued during Informal Negotiations.

In spite of the additional negotiation sessions, by the end of August many issues remained unresolved. This was reported to the MACC Executive Committee in early September and again on October 10th, where the Executive Committee unanimously directed staff to either: 1) complete informal negotiations with Comcast by the end of October, or 2) bring legislation to an Executive Committee meeting in November to move negotiations from the Informal to the Formal Process.

By October 25th, after over 30 meetings on the renewal (seven in October), it was clear to MACC staff that the negotiations would not be completed by the end of the month or in time for the jurisdictions to act before the current franchise expired at the end of January 2014. As a result, the MACC Executive Committee on November 22nd adopted a MACC Resolution which moved negotiations to the Formal Process and recommended that the full Commission request that the member jurisdictions extend the current franchise agreements to the end of 2014 to accommodate the Formal Renewal steps.

Action Requested

Today, MACC asks you to extend the term of the Comcast Cable Franchise Agreement until the end of December, 2014 in order to accommodate the time needed to complete the Formal Renewal Process (Comcast Legal has agreed with the terms of this extension). We have worked with your staff and legal counsel to prepare a resolution or ordinance to effect this change in your jurisdiction. All 15 MACC member jurisdictions must pass similar

legislation in order for this change to be effective. Extensions may be granted after the January termination date without any adverse effects.

In addition to this report and a copy of MACC's recommending resolution, we have also enclosed a "Question & Answer" memorandum that addresses expected questions about this action.

MACC staff would be happy to answer any questions you have about this recommended action.

Enclosures:

- MACC Resolution 2013-08
- MACC "Questions & Answers"

**QUESTIONS & ANSWERS
ABOUT THE PROPOSED EXTENSION OF
COMCAST'S FRANCHISE TERM**

The following Questions & Answers were prepared by MACC Staff to attempt to provide you answers to expected questions regarding the proposed action:

Q1: How long a term was proposed for the new franchise?

A: We agreed with Comcast on 10 years which is typical in today's market – the current franchise was granted in 1999.

Q2: What major issues in the negotiations were unresolved by the end of October?

A: As of October 31st, the following major issues remained unresolved (a number of lesser issues also remained open):

- Franchise Fee Revenue – The definition of “Gross Revenues” describes in detail the sources of cable service revenue used to compute the 5% franchise fee Comcast owes member jurisdictions for the use of their Right of Way (ROW). (MACC estimates a loss of \$2 million in revenues over 10 years if Comcast's changes are accepted).
- Police Powers – For more than thirty years MACC area cable operators have agreed that each jurisdiction could change their police powers ordinances for management of its ROW as needed – Comcast now insists that they should only be subject to ordinances in place at time of the grant of their new franchise agreement – future jurisdictional ordinances would not apply to them.
- Customer Service – Comcast wants to eliminate business subscribers from the protections of the franchise and reduce other customer service provisions. MACC had already agreed to a reduced fine schedule.
- The Public Communications Network (PCN) – For more than thirty years MACC area cable operators have provided, at cost, network services to over 240 local government, school and library sites. Comcast wants to turn the operations of the PCN over to an affiliate company – many issues remain to be resolved with this proposed transition – PCN Users are not happy with this management change which would remove some network management and responsibility out of Oregon.
- Public, Education and Government TV Channels (PEG) – MACC asked for one additional channel for local government programming and to begin upgrading channels to HDTV.

Submitted for informal renewal negotiations only (47 U.S.C. 546 (h)) - pursuant to Federal Rules of Evidence 408 or its state, local or city equivalent.

Comcast first agreed but recently suggested MACC trade that channel for other franchise concessions.

- Competitive Equity – Comcast wants to rewrite the terms that dictate how MACC and the jurisdictions will treat competitors who enter the local market. MACC prefers to use the rules set-forth by the FCC and to not reduce our rights below those standards.
- PEG/PCN Grant Fund. In the current franchise, Comcast agreed to fund the Grant Fund (which supports PEG and PCN users) in an amount equaling \$1/month/subscriber. Comcast passes that cost on to its customers, but it is their responsibility. MACC is seeking to maintain the status quo for Grant funding by using the inflation-adjusted equivalent for the next 10 years (about \$1.35), which would still not meet all the demands on that Fund. Comcast has offered 50¢ and has proposed eliminating Grant funding for PCN equipment (which would result in about \$550,000/year in costs to be shifted to the member jurisdictions) Comcast has proposed eliminating operational Grant support to a number of small PCN Users and agencies (including the Virginia Garcia Medical Clinics, Banks/Gaston Schools, the cities of North Plains, Cornelius, Banks, and King City) – this would either force these small Users to either pay this cost (about \$150,000/year) from their general funds or drop their PCN services entirely.

Q3: Why not just continue informal negotiations and extend the franchise term to accommodate those discussions?

A: MACC and Comcast have had 33 meetings, seven of those in October. Without the timeline structure of the Formal Process, negotiations could drag on even longer.

While MACC sees the Formal Process as necessary to ensure a timely renewal, concurrent informal discussions with Comcast can continue. This is not unusual during the Formal process.

Q4: Won't the Formal Process be costly to the MACC member jurisdictions?

A: No, not at all. Long before the renewal discussions began this year, MACC began to set-aside a portion of the franchise fees allotted to its operations to pay for the costs of the community needs assessment, the actual renewal costs and, if needed, for the Formal Process. Funds were budgeted in this year's MACC budget just for Formal Process costs.

However, if MACC accepts Comcast's current positions, the resulting franchise will be very costly to the jurisdictions in lost franchise fee revenues and reduced public benefits including \$6 million in Grant Funding and jurisdictional control over the PROW.

Q5: Is use of the Formal Process common and are other jurisdictions moving to this process in their negotiations with Comcast?

Although it has been uncommon in the past, recently it has been used more frequently in Comcast systems. Besides MACC (and one other jurisdiction in the Oregon market that may move to Formal), at least three jurisdictions in the West Comcast region have moved to the Formal Process. We hear others are considering it.

Q6: Aren't there significant legal risks in entering the Formal process?

A: There are legal risks to cable franchising in general. However, even when a jurisdiction is in the Informal Process they operate under many of the same rules as when under the Formal Process.

Q7: What happens if Comcast is denied a renewal of its franchise agreement?

A: In the unlikely event the MACC jurisdictions under the Formal Process eventually decide to deny Comcast a cable franchise renewal, Comcast would lose its right to use the ROW and may need to respond to a new MACC RFP in competition with other providers.

Q8: Are there other competitors to Comcast who would offer to provide services to MACC members if Comcast lost its franchise to serve this area?

A: Most definitely. Although this process is unlikely to result in a new provider, the MACC service area is very attractive to competitors as a place to offer high-end communications systems like cable and high-speed Internet services. In the unlikely possibility that Comcast would no longer have a franchise, we would expect many competitors to appear.

Q9: Are the subscriber rates for cable services negotiated during a renewal?

No, for all intents and purposes, most subscriber rate regulation at the local level ended in 1998. We cannot regulate cable rates or dictate the actual programming offered by a cable operator in a cable franchise.

Q10: Why can't MACC just force Comcast to accept the terms of a new cable franchise?

A: Federal Law dictates the process used for renewing a franchise based on a community's needs. MACC has to follow Federal Law and really does not have the ability to force a franchise on a provider.

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION 2013-08

A RESOLUTION RATIFYING THE EXECUTIVE COMMITTEE'S DIRECTION TO BEGIN THE FORMAL RENEWAL PROCESS TO RENEW COMCAST'S FRANCHISE AND RECOMMENDING THAT THE MACC MEMBER JURISDICTIONS EXTEND THE COMCAST FRANCHISE TO ENABLE THE COMMISSION TO COMPLETE THE FORMAL RENEWAL PROCESS

WHEREAS, in 1980 the Metropolitan Area Communications Commission ("MACC") was formed by Intergovernmental Agreement ("IGA") to work cooperatively and jointly on communications issues, in particular the joint franchising of cable services and the common administration and regulation of such franchise agreements; and

WHEREAS, today the member jurisdictions of MACC consist of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin, and West Linn ("Member Jurisdictions"); and

WHEREAS, the IGA contemplates that MACC and its Member Jurisdictions may grant one or more nonexclusive cable franchise agreements to construct, operate, and maintain a cable service system within the combined boundaries of the Member Jurisdictions; and

WHEREAS, on February 1, 1999, MACC and its Member Jurisdictions at that time, granted nonexclusive cable franchise agreements ("Comcast Franchises") which are now held by Comcast of Oregon II, Inc. ("Comcast"); and

WHEREAS, the Comcast Franchises will expire on January 31, 2014; and

WHEREAS, on March 9, 2011, Comcast requested that the Comcast Franchises be renewed; and

WHEREAS, the IGA authorizes MACC to process Comcast's renewal request on behalf of the Member Jurisdictions, including informal negotiations as set forth in 47 U.S.C. 546 (h) and the formal renewal process set forth in 47 U.S.C. 546 (a-g); and

WHEREAS, in its letter of April 5, 2011, MACC, on behalf of its Member Jurisdictions, properly responded to Comcast's request for renewal of the Comcast Franchises and thereafter properly commenced the franchise renewal process set forth in federal law at 47 U.S.C. 546 by budgeting funds to support renewal efforts, discussing the renewal process at MACC meetings, and by developing/issuing a formal Request for Proposals ("RFP") for professional assistance to conduct a Technical Review of Comcast's operations and a Community Needs Assessment ("Needs Assessment") as provided under 47 U.S.C. 546; and

WHEREAS, on January 24, 2013 CBG Communications, Inc. ("CBG"), MACC's consultant, presented CBG's informal Technical and Needs Assessment findings, to-date, to MACC; and

WHEREAS, on January 24, 2013, the Commission directed staff to begin informal franchise renewal negotiations with Comcast, as set forth in 47 U.S.C. 546 (h); and

WHEREAS, staff began holding informal negotiations sessions with Comcast in February 2013; and

WHEREAS, on June 5, 2013, the Commission authorized the MACC Executive Committee to invoke the formal renewal process set forth in 47 U.S.C. 546 (a-g), if informal renewal negotiations were not successful; and

WHEREAS, on November 22, 2013, the Executive Committee found that further informal renewal negotiations have no reasonable prospect of success and directed MACC staff to begin the formal renewal process set forth in 47 U.S.C. 546 (a-g); and

WHEREAS, the formal renewal process cannot be completed prior to the expiration of the Comcast Franchises; and

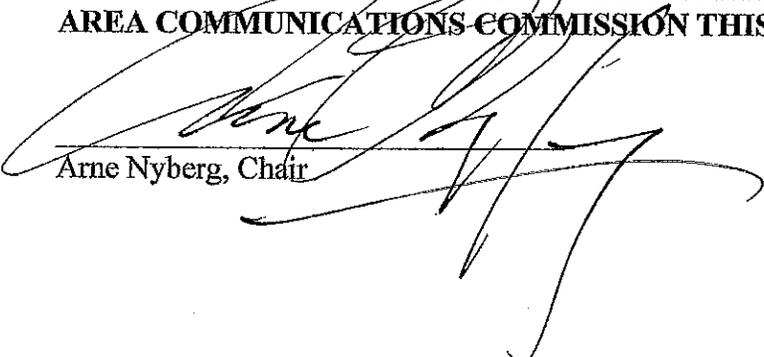
WHEREAS, MACC finds that extending the term of the Comcast Franchises is in the best interest of the Member Jurisdictions and the residents of the Member Jurisdictions; and

WHEREAS, Comcast has agreed to execute extension agreements with each Member Jurisdiction.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THAT:

1. Resolution 2013-06, adopted by the Executive Committee on November 22, 2013, directing MACC staff to begin the formal renewal process set forth in 47 U.S.C. 546 (a-g) is hereby ratified.
2. MACC recommends that the Member Jurisdictions extend the Comcast Franchises to the earlier of December 31, 2014, or the effective date of a renewed franchise.
3. This Resolution shall be effective from and after its adoption.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THIS 11th DAY OF DECEMBER 2013.


Arne Nyberg, Chair