

RESOLUTION NO. 4955-10

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, ("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, Verizon Northwest, Inc., a subsidiary of Verizon Communications, Inc. is the Franchisee under a Cable Franchise Agreement approved by MACC and granted by the City of Tualatin ("City") in 2007 for a period of 15 years; and

WHEREAS, on June 1, 2009 MACC and 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 MACC and the affected member jurisdictions 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 MACC and its member jurisdictions 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 MACC 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 MACC and its member jurisdictions 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, MACC has reviewed the materials provided by the Franchisee and Frontier in the Application and in response to an RFI originally

provided to the companies on June 25, 2009 and subsequently revisited and further investigated on numerous occasions through October 30, and undertook additional joint review of the proposed transferee's financial qualifications in cooperation with the Mt. Hood Cable Regulatory Commission (MHCRC); 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 the affected member jurisdictions approve the Application, provided those conditions and assurances are obtained from the companies, which Resolution is attached as Exhibit A; and

WHEREAS, pursuant to Section 4(E) of the MACC Intergovernmental Agreement, final approval would be granted only if all eleven affected jurisdictions also approve the Application as recommended by MACC; 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.

BE IT RESOLVED BY THE CITY OF TUALATIN, Oregon, that;

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.

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. All eleven affected MACC member jurisdictions consent to the transfer of control, as determined by MACC staff in a formal written certification.

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

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

4. 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.

5. Franchisee shall comply with all valid local laws, agreements, and Franchise requirements consistent with applicable federal and state law including all terms of the MACC/Verizon 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 MACC member jurisdictions.

6. 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 or performance bond in a form acceptable to MACC in the amount of \$250,000, to secure the payment of franchise fees and any penalties, for a period of five years after closing of the Verizon/Frontier merger transaction.

7. Verizon has paid MACC all reimbursement costs due as a result of review of the transfer of control application, consistent with the separate agreements concerning those costs.

8. Transferee provides current contact information for notice recipients under Section 16.5 of the Franchise.

9. Transferee provides a new Exhibit E, "Franchisee Parent Structure."

10. MACC and its member jurisdictions' 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.

11. During the week ending January 15, 2010, Transferee will provide MACC 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 MACC with a complete projected channel lineup no later than 30 days prior to the close of the transaction.

12. Transferee acknowledges these conditions of approval of the transfer of control in writing in a form and by a date acceptable to MACC.

13. Approvals granted by MACC and its member jurisdictions 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 MACC representatives and advise them on the status of the merger. MACC and its member jurisdictions shall consider the information provided by Verizon and Frontier and consider whether to extend the previously granted approvals. Such extensions shall not be unreasonably withheld.

Section 4. Authorization to Execute and File Resolution.

The Mayor is authorized to execute and file a copy of this Resolution with MACC.

Continued on next page.

Section 5. Effective Date.

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

Introduced and adopted this 25th day of January 2010.

CITY OF TUALATIN

By _____
Mayor

ATTEST:

By *[Signature]*
City Recorder

APPROVED AS TO LEGAL FORM

[Signature]
CITY ATTORNEY