

RESOLUTION NO. 5219-14

A RESOLUTION EXTENDING THE TERM OF THE CABLE TELEVISION SERVICES AGREEMENT WITH COMCAST OF OREGON II, INC. TO ENABLE THE METROPOLITAN AREA COMMUNICATIONS COMMISSION TO COMPLETE THE FORMAL RENEWAL PROCESS

WHEREAS, the Metropolitan Area Communications Commission, hereinafter "MACC," is an intergovernmental cooperation commission formed by Intergovernmental Agreement ("IGA") under ORS Chapter 190, with 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 as members ("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, 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 properly responded to Comcast's request for renewal of the Comcast Franchises and thereafter commenced the franchise renewal process set forth in federal law at 47 U.S.C. 546; and

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

WHEREAS, on November 22, 2013, the MACC Executive Committee directed MACC staff to begin the formal renewal process set forth in 47 U.S.C. 546 (a-g), which direction the MACC Board of Commissioners ratified by Resolution 2013-08 on December 11, 2013; and

WHEREAS, the Member Jurisdictions previously agreed to extend the term of Comcast Franchises to December 31, 2014, to provide time for MACC to process

Comcast's franchise proposal under the formal process rules prior to expiration of the Comcast Franchises; and

WHEREAS, on October 9, 2014, the MACC Commission adopted Resolution 2014-03, recommending that Member Jurisdictions extend the Comcast Franchises to June 30, 2015, to allow MACC and Comcast additional time to complete the formal renewal process; and

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

WHEREAS, the City of Tualatin finds that it is in the best interest of the City and its residents to extend the term of the Comcast Franchise to allow MACC to complete the formal renewal process.

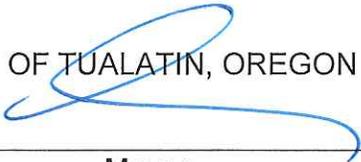
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The Mayor is hereby authorized to execute the extension agreement with Comcast substantially in the form attached hereto as Exhibit A to allow MACC to complete the formal renewal process set forth in 47 U.S.C. 546 (a)-(g).

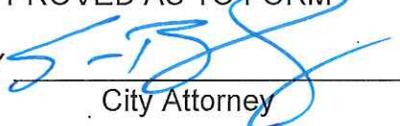
Section 2. This resolution shall be effective from and after its adoption.

Adopted by the City Council this 24th Day of November, 2014.

CITY OF TUALATIN, OREGON

BY 
Mayor

APPROVED AS TO FORM

BY 
City Attorney

ATTEST:

BY 
City Recorder

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

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

Q1: Why are MACC and Comcast seeking a second extension?

A: Significant progress in informal negotiations was made toward a new agreement this Summer. Rather than interrupt the momentum of negotiations with a forced decision on the merits of Comcast's RFRP response, both parties believe a quicker resolution can be accomplished through a few more months of informal negotiations.

Q2: What progress was made in negotiations that give the parties this confidence?

A: MACC and Comcast have agreed in principle on many of the issues where we were far apart earlier in the year (although nothing is final until the all topics are resolved), including:

- Jurisdictions' control of their individual Right of Way
- Franchise Fee Definition
- Customer Service Standards
- Comcast's contribution toward Public and Government Access TV services
- An agreement on the upgrade of local Access channels to HD quality

Q3: Was a longer extension considered?

A: We feel deadlines are helpful to keep both MACC and Comcast on track. Certainly we could come back for another extension, especially if we were extremely close to an agreement on a complete franchise. For now, we feel the time proposed is adequate to get the job done if both parties continue to work together to make it happen.

Q4: Has this renewal Process been costly to the MACC member jurisdictions?

A: No, not at all. Long before the renewal discussions began, MACC budgeted appropriately for the costs of the community needs assessment, and expected renewal costs – both Informal and Formal. Funds were budgeted in this year's MACC budget for the Formal Process costs. MACC is within its budget.

However, if MACC had accepted Comcast's positions when talks broke off in 2013, the resulting franchise would have been very costly to the jurisdictions in lost franchise fee revenues and reduced public benefits.

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, Oregon City is currently in the Formal Process, and at least one other jurisdiction in the Comcast West region has moved to the Formal Process. We hear others are considering it.

Q6: Has Google's interest in providing service to four of MACC's jurisdictions raised any issues?

A: Google's potential entry appears to have increased Comcast's concerns with the section of the franchise related to competitive equity.

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, this time with competition from other providers.

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

No, 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 does not have the ability to force a franchise on a provider.

**REPORT TO MACC MEMBER JURISDICTIONS
RECOMMENDATION
COMCAST CABLE FRANCHISE TERM EXTENSION
OCTOBER 2014
(Prepared by MACC Staff)**

Your jurisdiction is a member of the Metropolitan Area Communications Commission (MACC), the intergovernmental agency that administers and regulates cable television franchises for fourteen cities and Washington County. MACC currently administers Comcast's multiple cable television franchises (Comcast Franchise) on behalf of its members, as well as a Frontier Cable Franchise for eleven jurisdictions where that service is offered. MACC staff, its legal counsel and advisors, negotiate directly on your behalf. Each MACC jurisdiction has its own representative, a MACC Commissioner.

MACC Recommendation – On October 9, 2014, the MACC Board of Commissioners (MACC Commission) unanimously passed a resolution (copy attached as Exhibit A) recommending its fifteen member jurisdictions extend the current Comcast Franchise term from December 31, 2014 to June 30, 2015, 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 was to expire on January 31, 2014.

As we reported to you last winter, informal negotiations with Comcast began in February 2013 and continued over eight months until it became clear to MACC that continued informal negotiations with Comcast would not result in an acceptable franchise agreement before the franchise expired. Therefore, the Commission voted on December 11, 2013, to move negotiations into the Federal Formal Renewal Process (Formal Process) and requested that the member jurisdictions agree to extend the term of the Comcast Franchise from January 31, 2014 to December 31, 2014 in order to provide time to complete that Formal Process. That extension was unanimously approved by the Member Jurisdictions.

MACC Formal Process and Need for a Second Extension

The move to a Formal Renewal Process placed the renewal into a structure similar to a "request for proposal," where the cable operator must provide a response that meets the "cable related needs and interests of the MACC communities." It also requires MACC to carefully review the operator's response before making a recommendation to either grant or deny a new franchise agreement. Typically, the Formal Process provides an additional incentive and structure for the parties to agree on a new franchise agreement. That has been the MACC/Comcast experience as well.

On April 8, 2014, the Commission took the next step in the Formal Process and approved the MACC Request for Formal Renewal Proposal (RFRP). The RFRP, among other things, set forth the results of MACC's Needs Assessment and provided Comcast with a model franchise agreement. Comcast provided its response to MACC's RFRP on August 6, 2014. Under the Formal Process, MACC has four months from this date in which to either renew the franchise or issue a preliminary assessment that the franchise should not be renewed and commence an administrative proceeding to consider the matter.

However, between April and September, MACC and Comcast agreed to continue informal negotiations. These talks have resulted in significant progress on a number of major franchise issues. At the end of September, MACC and Comcast agreed to "toll" or delay the Formal timeline to allow time for the informal negotiations to continue and conclude prior to a decision on the RFRP.

As part of the agreement to toll the Formal timeline, both parties also agreed to ask for an extension of the Comcast Franchise term until June 30, 2015. This action ensures both parties' rights are reserved, including the requirement on Comcast to provide service under the existing franchise agreement, and pay the member jurisdictions franchise fees.

At the MACC Commission's October 9th meeting, the Board unanimously agreed to recommend that the MACC member jurisdictions extend the term of the Comcast Franchise Agreement to June 30, 2015.

Action Requested

Today, MACC asks you to extend the term of the Comcast Cable Franchise Agreement until the end of June 2015 in order to accommodate the time needed to complete the current informal negotiations. If negotiations are not successful (which we do not expect), the Formal process and its deadlines will still be there to conclude the process in that timeframe.

We have worked with your staff and legal counsel to prepare a resolution to effect this change in your jurisdiction.

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. Your MACC Commissioner is a good resource to contact regarding this requested action.

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

Enclosures:

- MACC Resolution 2014-03
- MACC "Questions & Answers"

FRANCHISE EXTENSION AGREEMENT

WHEREAS, Comcast of Oregon II, Inc. ("Comcast Oregon") currently holds, through its subsidiary, Comcast of Tualatin Valley, Inc. ("Comcast Tualatin"), formerly TCI Cablevision of the Tualatin Valley, Inc., a cable franchise with the City of Tualatin ("City"), with an effective date of February 1, 1999, which was to expire on January 31, 2014 ("Franchise"); and

WHEREAS, the City entered into an Intergovernmental Agreement, in accordance with ORS Chapter 190, with the Metropolitan Area Communications Commission ("MACC") for transfer of administration responsibilities associated with the Franchise, including renewal negotiations; and

WHEREAS, the City and Comcast Oregon subsequently agreed, pursuant to a franchise extension agreement dated April 7, 2014, to extend the term of the Franchise to December 31, 2014; and

WHEREAS, MACC, on behalf of the City, has been working to process Comcast's response to MACC's request for a formal renewal proposal for renewal of the Franchise in accordance with 47 U.S.C. 546 ("Proposal"); and

WHEREAS, the City and Comcast Oregon wish to extend the Franchise to allow for additional negotiations toward agreement on a renewed franchise agreement, as well as to provide time for MACC to process Comcast's Proposal under the formal renewal process, prior to expiration of the Franchise.

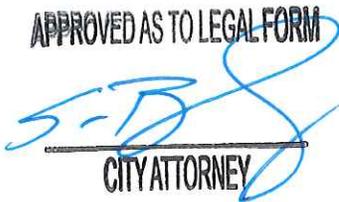
NOW, THEREFORE, the City and Comcast Oregon agree as follows:

1. The Franchise shall be extended to expire on June 30, 2015, unless a renewed franchise agreement takes effect prior to that date, in which case the Franchise shall expire on the effective date of the renewed franchise.

2. All provisions of the Franchise, other than the duration of the Franchise as set forth in Section 1, shall remain in full force and effect through the expiration date set forth herein.

3. The parties do not waive any rights which they enjoy under law as a result of agreeing to this Franchise Extension Agreement.

ACCEPTED this 24 day of November, 2014.

APPROVED AS TO LEGAL FORM

CITY ATTORNEY

City of Tualatin, Oregon

By: 
Print Name: Sherilyn Lombos
Title: City Manager

ACCEPTED this _____ day of _____, 2014.

Comcast of Oregon II, Inc.

By: _____
Print Name: _____
Title: _____