ORDINANCE NO. 1228-07

AN ORDINANCE GRANTING
A NON-EXCLUSIVE CABLE FRANCHISE TO
VERIZON NORTHWEST, INC.

WHEREAS, in 1980 the Metropolitan Area Communications Commission (hereinafter "MACC") was formed by Intergovernmental Cooperation Agreement, amended in 2002 and now an Intergovernmental Agreement (hereinafter IGA) to enable its member jurisdictions to work cooperatively and jointly on communications issues, in particular the joint franchising of cable services and the common administration and regulation of such franchises, and the City of Tualatin is a member of MACC; and

WHEREAS, the IGA authorizes MACC and its member jurisdictions to grant one or more nonexclusive franchises for the construction, operation and maintenance of a cable service system within the combined boundaries of the member jurisdictions; and

WHEREAS, the IGA requires that each member jurisdiction to be served by the proposed franchisee must formally approve any cable service franchise; and

WHEREAS, Verizon Northwest, Inc. has formally requested a franchise with MACC and several of its member jurisdictions, and MACC has reviewed the franchisee's qualifications in accordance with federal law; and

WHEREAS, the Board of Commissioners of MACC, by Resolution 2007-01 adopted on the 8th day of February, 2007, recommended that affected member jurisdictions grant a franchise to Verizon Northwest, Inc. in the form attached hereto as Exhibit "A"; and

WHEREAS, the Council finds that approval of the recommended franchise is in the best interest of the City and its citizens, in order to provide opportunities for effective competition in the provision of these services consistent with the federal Telecommunications Act of 1996;

NOW THEREFORE,

THE CITY COUNCIL ORDAINS AS FOLLOWS

Section 1. There is hereby granted to Verizon Northwest, Inc. a non-exclusive franchise on the terms and conditions contained in Exhibit "A". This nonexclusive grant authorizes the provision of cable services within the jurisdictional boundaries of the City as said boundaries presently exist or may be amended, commencing upon Verizon's fulfillment of the franchise acceptance provisions contained in the franchise and upon the formal determination by the MACC Administrator that all affected jurisdictions have approved the franchise, and ending fifteen years thereafter.

Section 2. The grant of franchise at Section 1 is conditioned upon each of the following events:

(a) The affirmative vote of the governing body of each MACC member jurisdiction to be served under the franchise;

(b) Verizon's fulfillment of the franchise acceptance provisions contained in the Franchise; and

(c) Formal written determination by the MACC Administrator that each of the above two events has occurred.

INTRODUCED AND ADOPTED this 26th day of February 2007.

CITY OF TUALATIN

By____________________
Mayor

ATTEST:

Sherilyn Lombos
City Recorder

MACC METROPOLITAN AREA COMMUNICATIONS COMMISSION
REPRESENTING THE COMMUNITIES OF BANKS, BEAVERTON, CORNELIUS, DURHAM, FOREST GROVE, GASTON, HILLSBORO, KING CITY, LAKE OSWEGO, NORTH PLAINS, RIVERGROVE, TIGARD, TUALATIN AND WASHINGTON COUNTY
Cable TV Franchise Regulation • Telecommunications Advice and Support • Public Communications Network (PCN)

MACC STAFF REPORT

VERIZON CABLE TV FRANCHISE RECOMMENDATION TO THE CITY OF TUALATIN

Prepared by the Metropolitan Area Communications Commission
February 2007

The Board of Commissioners of the Metropolitan Area Communications Commission (MACC) have recommended that your City, and other affected MACC members, grant Verizon Northwest, Inc. (Verizon) a 15-year cable television franchise (Exhibit A, MACC Recommending Resolution).

Verizon is currently upgrading its "copper" telephone system into an all Fiber-To-The-Premise (FTTP) network, which allows them to offer high-speed Internet service, cable service, and improved telephone services. This service, which Verizon calls FiOS, would compete directly with Comcast's cable services, as well as with their Internet and telephone service, "Comcast Digital Voice."

Verizon proposes to initially offer these services to eleven of the fourteen MACC jurisdictions in the areas where Verizon has Oregon PUC authority to operate their current telephone service. (See "Service Area" under "The Proposed Agreement" below.) A copy of the proposed franchise agreement is enclosed with this report (Exhibit B).

When you consider these issues, MACC staff and representatives of Verizon will be available to present this recommendation and answer your questions.

How will your decision affect your jurisdiction and citizens? If your City and the other affected MACC members grant Verizon a cable franchise, the company plans to construct a Video Hub Office (VHO) in the next 12 months in the Hillsboro area. This will enable Verizon to begin offering cable services – estimated to begin in Spring 2008. The entire franchised service area will have cable service available within four years of the date when Verizon first offers service. Once operating, Verizon's FiOS system will offer your citizens their first wire-based competitive choice for cable television services. Currently only Comcast Cable is franchised to provide cable service in the MACC area. We expect that Verizon's entry into this market should result in more stable prices. However, the two greatest benefits of this new competition should be: 1) choice among three (including satellite) providers, and 2) better customer service.

Background -- Verizon began upgrading their telephone plant in 2004 in those portions of the MACC area where they are authorized by the Oregon Public Utility Commission to provide telephone services. At this time, Verizon has upgraded most of its network to FTTP in Hillsboro, Beaverton, Aloha/West Union (unincorporated Washington County), Durham, King City, and Tigard, and is beginning work in the Tualatin area. They expect to complete this upgrade in 2008 to most of their Tualatin Valley service area.

At the urging of MACC in early December 2005, Verizon formally requested a franchise to use the FTTP network for cable television. On December 15, 2005, the Commission directed staff to enter into negotiations with Verizon. Those negotiations began a month later, in January 2006. MACC's negotiation team consistently received guidance from the MACC Commissioners throughout the negotiations. Negotiations successfully concluded on January 18, 2007. On February 8, 2007, the Commission, after a public hearing, voted to recommend this proposed franchise agreement to the affected MACC member jurisdictions.

Now, all affected jurisdictions will consider adoption of that franchise. By the terms of the MACC Intergovernmental Agreement, to which your jurisdiction is a party, every affected MACC jurisdiction must adopt the franchise, as recommended, to give Verizon the authority to provide cable service in any of the jurisdictions – <u>if one jurisdiction votes no, it vetoes the franchise for the others</u>.

The Proposed Agreement – The proposed fifteen-year Verizon franchise agreement is modeled on agreements Verizon has been awarded in over 650 other jurisdictions around the country now serving approximately 253,000 cable television subscribers. That said, specific requirements are very similar to the Comcast franchise. The Comcast franchise requires that other franchises granted in the MACC territory must be "reasonably comparable" as to their material terms. The enclosed Comparison Chart (Exhibit C) compares the material terms of the Verizon and Comcast agreements.

Highlights of the Verizon Agreement

<u>Service Area/Build out</u> – Verizon will provide cable services to eleven of the fourteen MACC jurisdictions – the Initial Service Area. That area includes all of Verizon's current telephone service area <u>except</u> for Banks, Gaston, and some rural areas of Washington County. However, MACC and Verizon will meet at least every two years to review whether technology changes or increases in population density will allow service to be extended into these areas. North Plains, most of Lake Oswego, and portions of Beaverton and unincorporated Washington County <u>will not be served</u> under this agreement because Verizon has no authorization from the PUC to provide service in those areas (Qwest is the authorized telephone provider in those areas – Qwest has yet to request a cable franchise).

We are confident that the combination of the proposed franchise's density requirements, the Urban Growth Boundary, the way Verizon constructs its facilities, and the economic incentives to provide service to every serviceable location, will ensure there is aggressive and widely-deployed availability.

Areas inside the Initial Service Area (including new developments) will have Verizon service available as long as the area meets the franchise density requirement (generally the same density requirement as Comcast). The choice of where to provide service is based in this case, not on income levels of particular areas (often referred to as "cherry-picking" and prohibited by Federal Law) but rather is based on the physical characteristics of potential service areas and on the existing telephone service areas of Verizon. Federal Law requires that local governments not unreasonably refuse to grant a competitive franchise such as this one, and do not require build-out of entire jurisdictions beyond Verizon's telephone service area.

Customer Service – We are pleased that, following guidance from the Commission, Verizon agreed to meet substantially the same customer service standards required of Comcast. We expect that competition, if Verizon is awarded a franchise, would result in both companies working to maintain the best customer service possible. MACC will closely monitor both companys' customer service performance for compliance.

The MACC office will play an important role during Verizon's deployment of cable services, working closely with them to eliminate or reduce problems. We will also be working closely with our jurisdictions and citizens to redress any problems they may experience before, during, and after the deployment.

Fines – Fines that could be levied against Verizon for failure to meet performance requirements in the franchise are proportionate to the company's projected subscriber base. Along with the competitive pressure to satisfy customers, these fines are adequate to give Verizon incentive to meet franchise standards. Even at this level, the agreement's fines are substantially higher than those found in other Verizon franchises, and in most Comcast franchises nationwide.

The high level of fines in the 1999 Comcast franchise resulted from the prior cable operators' (TCI and AT&T) violation of the telephone answering standards of the agreements for the three years prior to the 1999 renewal. Fines under the renewed franchise continued to be applied to AT&T until Comcast took over the operation of the cable system in 2003 and finally cured the telephone answering problem.

Institutional Network – MACC's institutional network, constructed by Comcast's predecessor and called the Public Communications Network (PCN), is a unique requirement of the original 1982 Storer Cable franchise. AT&T agreed to upgrade the PCN to an all-fiber network in 1999. As part of AT&T's upgrade agreement, PCN User fees will repay the cable operator over the 15 year term of the Comcast agreement for the upgrade, operation, and maintenance of the PCN. Comcast's monthly PCN service fees are designed to recover all of Comcast's costs to provide the network. Since all area schools and most local governments are PCN Users, there is no market for another institutional network offered by Verizon. Therefore, in consultation with the Commission, we did not require Verizon to duplicate the PCN.

PEG/PCN Financial Support – Verizon will support Public, Education, and Government (PEG) programming and the PCN by paying $1.00 per subscriber per month for that support. Comcast's franchise provides an identical amount.

Incidental Payment – Verizon has also agreed to pay MACC an Incidental Payment of $149,600 over four years. Comcast's Incidental Payment was significantly higher due to the unique circumstances that existed during the 1999 renewal of its franchise agreement. Some of those circumstances were:

1) The significant reduction of cable operator PEG funding support from the old franchise to the new agreement.
2) The upgrade of the PCN to all fiber and the increased service costs to PCN Users.
3) In 1999, Comcast had almost 120,000 cable subscribers - Verizon starts at zero subscribers and only projects acquiring about 20% of Comcast's current market share.

Early Termination – The proposed franchise has a clause whereby Verizon could terminate this agreement within four (4) years of the effective date with notice to MACC and subscribers. All Verizon cable franchises granted to date (more than 650) contain this (usually 3 year) provision. MACC staff believes it is very unlikely this provision will ever be exercised due to Verizon's success in obtaining franchises and its growing number of subscribers (currently over 253,000). However, we recognize the many issues involved in beginning a new venture, and agree this is prudent for both Verizon and the jurisdictions.

What specific action does MACC recommend? MACC recommends that your City grant Verizon the proposed cable television franchise. MACC provided a model ordinance for use by your jurisdiction to adopt the franchise and has worked with your staff to prepare it for your consideration.

Comcast is, of course, very interested in the terms and conditions of Verizon's franchise. In a recent letter they sent to City Councilors, Comcast detailed some concerns. We would be happy to answer questions. However, MACC staff and legal counsel remain confident that the franchise agreements are, as required, "reasonably comparable" as to their material terms.

Thank you for considering this important and ground-breaking franchise agreement. We look forward to meeting with you to discuss it and to answer any questions you may have. We have also attached a Verizon Questions and Answers memorandum that addresses typical questions (Exhibit D). In the meantime, please contact your MACC representative, Chris Barhyte, or Bruce Crest, MACC Administrator, if you have any questions.

Enclosures: Exhibit A – MACC Recommending Resolution
Exhibit B – Proposed Verizon Cable Television Franchise
Exhibit C – Comcast/Verizon Franchise Comparison Chart
Exhibit D – MACC Verizon Cable Questions and Answers

MACC
Metropolitan Area
Communications Commission
REPRESENTING THE COMMUNITIES OF BANKS, BEAVERTON, CORNELIUS, DURHAM, FOREST GROVE, GASTON, HILLSBORO, KING CITY, LAKE OSWEGO, NORTH PLAINS, RIVERGROVE, TIGARD, TUALATIN AND WASHINGTON COUNTY
Cable TV Franchise Regulation • Telecommunications Advice and Support • Public Communications Network (PCN)

Verizon Cable Franchise
Questions and Answers
Prepared by MACC
February 2007

Q1: Do MACC jurisdictions have to grant additional franchises?

A: Yes, if the proposed company has the legal, financial, and technical qualifications to own and operate a cable system, and if their proposed franchise meets the needs of the jurisdictions they seek to serve. The MACC/Comcast Franchise Section 2.5 (and Federal Law) requires that all franchises be nonexclusive. It also requires that any competitive franchises must be "reasonably comparable" to the MACC/Comcast agreement.

Q2: Why are these new providers coming here at this time?

A: This new cable competition is a result of advances in telecommunications technology. This allows traditional telephone companies to install updated fiber optic networks that can also carry high-speed Internet and cable television signals. Traditional telephone companies need to diversify their systems to offer advanced services since cable companies, like Comcast, are now offering telephone services and are taking customers from traditional telephone companies.

Q3: Is Verizon seeking franchises in other areas of the country besides MACC?

A: Yes. Verizon has been awarded over 650 cable franchises, mostly on the east coast, in Texas, and in Southern California. However, MACC is the first area in the Pacific Northwest that Verizon has approached for a franchise. The MACC area also represents the largest concentration of Verizon telephone subscribers upgraded to Fiber to the Premise (FTTP) in Oregon with approximately 123,000 of Verizon's statewide 159,000 upgraded subscribers – Verizon has a total of 350,000 telephone customers (traditional and FTTP) in Oregon.

Q4: Does Comcast have any influence as to whether you grant additional franchises?

A: Not directly. Comcast has, however, provided elected officials with a letter detailing parts of the Verizon franchise that the company believes puts them "at a competitive disadvantage." As they note, the Comcast franchise requires any additional franchises granted be "reasonably comparable" as to the material terms. The MACC Board of Commissioners determined that the Verizon franchise is reasonably comparable to the Comcast franchise. After a review of the Comcast letter, MACC staff remains confident the franchises are, taken as a whole, and recognizing that Verizon starts with no customers, "reasonable comparable."

Comcast is, of course, very interested in this process and in the terms granted Verizon. Elected officials in the MACC jurisdictions may also receive personal contacts from Comcast or Verizon during the franchise review process. Because all decisions on the granting of a franchise should be on the record, <u>contacts with interested parties should be avoided, publicly disclosed, and reported to MACC</u>.

Q5: Will our cable franchise fee revenues increase with Verizon's entry into our area?

A: Not significantly, since many of Verizon's cable customers will come from existing Comcast customers (Comcast has about 120,000 in the MACC area). Verizon projects acquiring about 20% of Comcast's market share. Verizon should also attract a number of satellite television subscribers and non-cable subscribers to their cable service. This should result in a total increase in the number of all cable subscribers for both companies and potentially some modest increase in franchise fee revenues to MACC jurisdictions. One unknown factor is the affect on franchise fees resulting from reductions in both operators' pricing due to competition (see Q6).

Q6: Won't the Verizon Franchise result in significantly lower prices for cable service from both companies?

A: Rates for services generally do not drop dramatically with cable competition. However, all franchised operators will probably be more careful in setting rates and charges so, over time, subscribers should benefit from competition. We hope this competition also results in smaller increases in cable rates. Comcast's most recent annual rate adjustment raised rates 7.9% for its most popular service. Customers should also find that competition means more services for their dollar and a choice of different packages or bundles of services.

Q7: Will customers receive better service due to cable competition?

A: The most significant improvement we expect to see from competition is better customer service from both companies since subscribers will now have a choice in providers. Customers can "take their business elsewhere" if they become dissatisfied with the service offered by one company. Satellite service will remain an option for some subscribers.

Q8: Will Verizon build-out their cable system to everyone within their franchise area?

A: Yes, because Verizon needs to pay off costs to upgrade their new FTTP network by serving every home that meets the Franchise density requirement. Our Metro Urban Growth Boundary (UGB) also makes MACC's service area very attractive to them since it increases the density inside the Boundary. We don't anticipate any build-out issues, nor do we expect the "cherry picking" practiced by AT&T in many areas where they offer cable-like services in California and elsewhere. Within the franchise area and in new development areas, the Franchise's density requirement (like Comcast's) requires service to any home that meets it.

Q9: Why aren't all parts of all MACC communities included in the Verizon agreement?

A: Unlike a traditional cable television provider, Verizon's cable service has no cable equipment in the public rights of way. It is simply an electronic signal that is carried on their FTTP telephone network. Because Verizon cannot legally provide service to areas currently served by Qwest (all of North Plains, most of Lake Oswego and portions of Beaverton and unincorporated Washington County), the franchise is limited to existing Verizon telephone areas. Qwest has yet to develop a viable cable service to offer its telephone customers and has not requested a franchise to do so.

The Cities of Banks and Gaston, which Verizon is not upgrading to FTTP at this time, are also not included in this franchise, but there are provisions to include them as soon as population growth, economics, and technology make service there practical.

EXHIBIT C

COMCAST/VERIZON FRANCHISE COMPARISON
Metropolitan Area Communications Commission
February 13, 2007

FRANCHISE PROVISION	COMCAST	§	VERIZON	§
SERVICE AREA				
Build-out/Density Requirement	All MACC jurisdictions in areas that meet Density requirement of 10 homes/quarter mile. Timeline: system <u>upgrade</u> within three years of franchise date.	13.2 11.1	All of Verizon's MACC jurisdictions meeting the Density requirement of 10 homes/quarter miles *except* Banks, Gaston, (due to construction cost) and North Plains because it is not served by Verizon. Timeline: System <u>built</u> in initial service area within four years of franchise date. Additional areas to be reviewed every two years.	3.1-3.2
FINANCE				
Franchise fees	5% of gross revenues	3.1	5% of gross revenues	7.1
Gross Revenue Definition	Comparable Net Effect	1.18	Comparable Net Effect	1.23
Audit authority	Authority to audit once each 12 months; If franchise fees are underpaid by 3% or more, Comcast pays the total cost of the audit	3.6	Authority to audit once every two years; Until Verizon has more than 10,000 subscribers, if franchise fees are underpaid by 5% or less, Verizon pays the total costs of the audit up to $10,000; When Verizon has 10,000 subscribers or more, if franchise fees are underpaid by 3% of less, Verizon pays the total costs of the audit up to $15,000.	7.4

Letter of Credit	$100,000	5.4	$20,000 (approx. 20% of Comcast amount due to difference in number of potential subscribers)	13.6
Incidental PEG / PCN Payments	$800,000	5.6	$149,600 (see MACC Staff Report -- "Verizon Cable TV Franchise Recommendation")	14.5
Insurance Limits	General Liability: $2 million Broadcasters Liab: $1 million Auto BI/PD: $2 million Employers Liab: $2 million	5.1	General Liability: $3 million Broadcasters Liab: $1 million Auto BI/PD: $2 million Employers Liab: $2 million	10.1
PEG PROGRAMMING				
PEG Channels	6 channels, trigger for additional channels	9.3-9.8	6 channels, trigger for additional channels	6.1
PEG/PCN Fee	$1.00 per subscriber /month	9.7	$1.00 per subscriber/month	6.4.2
PEG Origination Points	Seven Activated Origination Points	9.5	Five Activated Origination Points	Exh B
CUSTOMER SERVICE				
Telephone Answering	90% of the calls answered within 30 seconds	6.3	90% of the calls answered within 30 seconds	Exh D(2)
Local office	One center conveniently located in the franchise area to provide pick up/drop off equipment, bill payment, and complaints	6.2	No local office requirement. Verizon must pick up or drop off equipment free of charge (using representative visit, prepaid mailer, or establishing a local business office)	Exh D(3)

Reporting	Required quarterly for: • Franchise Fees • Complaints • Construction Activities • Subscriber Information • Service Call Statistics • Telephone Activity • Other Information "as appropriate and reasonable."	3.4 7.1 7.4	Required quarterly for: • Franchise Fees • Installations • Service Call Statistics • Telephone Activity On an on-going basis: • Complaints • Other Information "as reasonably necessary."	7.2 9.4 Exh. D
Fines	<u>Telephone answering:</u> Failure to meet standard – $10,000 first violation; $20,000 2nd violation; $30,000 3rd violation Other Violations: $250/day No cap on total fines.	15.2	<u>Telephone answering</u>: Failure to meet standard – $2,000 first violation; $4,000 2nd violation; $6,000 3rd violation (Fine amounts reflect differences in number of potential subscribers.) May be reduced by 50% if no fines levied in first 42 months. Other Violations: $250/day $25,000/year cap on total fines.	13.5
OTHER FRANCHISE REQUIREMENTS				
Term	15 years	2.3	15 years	2.3
Franchise termination	Comcast may abandon the system during the franchise term except that Grantors may operate system temporarily, pursue legal remedies to maintain service and/or re-grant the franchise as applicable.	16.1-16.2	At the end of 4 years, if video services are not commercially viable, Verizon must provide Grantor and subscribers advance notice to terminate services	3.9

Emergency Alert	Must comply with FCC requirements, and local/state EAS Plans and remotely override audio and video on all channels	6.9	Must comply with FCC requirements, and local/state EAS Plans and remotely override audio and video on all channels	5.3
Technical Standards	• 550 MHz System Required. • 12-hour Main backup power, 2-hour Remote backup power. • FCC technical performance standards apply. • NECA, NESC, OSHA Standards apply. • Grantor may inspect facilities.	11.1 14 12 10.1 3 10.1	• 860 MHz System Required. • 24-hour Main backup power, 4-hour Remote backup power. • FCC technical performance standards apply. • NECA, NESC, OSHA Standards apply. • Grantor may inspect facilities.	5
Institutional Network (PCN)	Upgrade of existing network (PCN subscriber service rates reimburse Comcast for PCN investment over 15 yr. term.)	11.2	No requirement. There is no MACC–area market for a second I-Net like the PCN.	n/a
Public Building Connections	Complimentary "Standard" cable service to public use buildings.	13.3	Complimentary "Basic" service to unserved public buildings.	3.3

WRITTEN ACCEPTANCE OF ORDINANCE NO. 969-97

CITY OF TUALATIN, OREGON

TO THE MAYOR AND COUNCIL OF THE CITY OF TUALATIN:

WHEREAS on the 9th day of July 2007, the Tualatin City Council passed Ordinance No. 1242-07 entitled:

AN ORDINANCE GRANTING A FRANCHISE FOR A GENERAL COMMUNICATIONS BUSINESS TO VERIZON NORTHWEST INC. BY THE CITY OF TUALATIN; AND REPEALING ORDINANCE NO. 969-97

WHEREAS, the ordinance was duly signed and approved on the 9th day of July 2007, by the Mayor of the City of Tualatin, and attested by the City Recorder.

NOW, THEREFORE, VERIZON NORTHWEST INC. accepts Ordinance No. 1242-07 and all the terms and conditions of the ordinance.

IN WITNESS WHEREOF, VERIZON NORTHWEST INC. has caused this acceptance to be duly executed this 9th day of July, 2007.

VERIZON NORTHWEST INC.

____

CITY OF TUALATIN, OREGON

Sherilyn Lombos

City Recorder