

Comparison Summary Chart
Regarding MHCRC Staff Proposal for Verizon Franchise
Prepared for October 2, 2008, MHCRC Special Meeting

PART I: THREE SIGNIFICANT UNRESOLVED ISSUES

Note: The Sections related to these issues are highlighted in Yellow in the staff recommended franchise.

Franchise Area	COMCAST East County Franchise	MHCRC STAFF POSITION AND PROPOSAL	VERIZON POSITION AND PROPOSAL (As Understood by Staff)
<p>Customer Service: Section 9</p>	<p>(Section 13) Comcast must comply with the cities' and County's cable television consumer protection policy ("customer service standards") as provided by and in accordance with federal law. The local jurisdictions may also update the customer service standards as necessary.</p> <p>The jurisdictions each adopted standards in 2001.</p>	<p>Position: The Jurisdictions have been granted rights under federal law to establish, update and enforce customer service standards. The Jurisdictions each adopted standards in 2001 that apply to cable companies in the MHCRC area (currently two companies: Comcast and Cascade Access).</p> <p>Staff believes Verizon's position is, in effect, a waiver of rights granted to a local jurisdiction under federal law for consumer protection.</p> <p>Compromise Proposal: In response to Verizon's desire for certainty and assurance that the jurisdictions won't act capriciously in updating the standards, staff has proposed:</p> <ul style="list-style-type: none"> ▶ For the first 5 years of the franchise, essentially freezing the current customer service standards for Verizon, by the jurisdictions agreeing to delay any enforcement of updated standards (if any) for five years; ▶ After 5 years, agreeing that any revisions to the standards would have to be cost/benefit tested, and go through a public legislative process that involved Verizon; ▶ Verizon would have a lengthy period of time (up to 6 months) before having to comply with any updated standards; and, ▶ This would also not preclude Verizon from requesting a minor variance to any standard if there is an operational problem for Verizon. 	<p>Position: Verizon wishes to establish the customer service standards in the franchise; and those standards could not be adjusted or updated, without Verizon's consent, for the franchise term. As a new entrant into the cable services market, Verizon argues for a need for certainty regarding its customer service obligations and efficiencies at its corporate level regarding responding to customers' and reporting on service standards.</p> <p>Current Proposal (same as prior to Public Hearing): Same as above ("lock in" the standards for franchise term of 10 years); agreed to incorporate current jurisdictional standards, EXCEPT in the area of the customer "on-hold" or "wait" times on phones to speak to a Verizon customer service representative.</p>

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<p>Enforcement: Fines and Caps Section 14</p>	<p>(Section 23) The Jurisdictions may impose (after due process and based on certain criteria) the following remedies for a material violation of the franchise: ▶ financial penalties up to \$1,000 per measure of violation. ▶ require Comcast to reduce a rate or fee; ▶ require Comcast to grant a subscriber refund; ▶ reduce the franchise term; and/or ▶ terminate the franchise.</p> <p>The franchise does not provide a cap to the total amount that could be assessed for material violations.</p>	<p>Position Staff believes potential penalties must be reasonable in relation to the size of Verizon as a company, in order to provide a deterrent for violations, and to penalize the company if a material violation is found.</p> <p>The Jurisdictions may impose (after due process and based on certain criteria) the following remedy, among others, for a material violation of the franchise: ▶ financial penalties up to \$1,000 per measure of violation. ▶ require Comcast to grant a subscriber refund; ▶ reduce the franchise term; and/or ▶ terminate the franchise.</p> <p>Compromise Proposal: ▶ Conceding a fine cap, setting it at \$200,000/year max, with a \$1,000 per incident cap; ▶ Eliminating the three other remedies Verizon objected to, leaving only fines and franchise termination as possible remedies for material violations; and ▶ Agreeing to Verizon’s performance security amount of \$50,000 (staff had originally proposed \$100,000).</p>	<p>Position: Verizon wishes to limit the amount of a potential penalty for material violations based on its potential marketshare of cable subscribers in the MHCRC jurisdictions; Initial proposal: \$200 per measure of violation; total cap per year of \$20,000.</p> <p>Verizon also objects to the other violation remedies contained in the Comcast and Cascade Access franchises, which include ▶ require the company to reduce a fee; ▶ require the company to grant a subscriber refund; and ▶ reduce the franchise term to no fewer than three years. The remaining remedy, other than the fines listed above, is to terminate the franchise.</p> <p>Proposal offered Aug. 13: \$400 per measure of violation; total cap per year of \$40,000.</p> <p>Current Proposal: ▶ Incremental per incident fine caps based on numbers of Verizon subscribers, starting at \$300 and increasing to \$700; ▶ Total annual fine caps, staggered based on Verizon's subscribership, only applicable to four areas of the franchise agreement ▶ Maximum amount proposed for any of the four areas starts at \$20,000, increased to \$40,000.</p>
<p>Treatment of Cable vs. Telephone Facilities (TitleII/TitleVI)</p>	<p>The Comcast cable franchise treats cable system, cable services and other cable related regulations as defined by and in accordance with federal cable</p>	<p>Position MHCRC staff proposed use of federal definitions and law in these areas. This approach maintains current rights under federal law for both Verizon and the jurisdictions: No more, no less.</p>	<p>Position: Verizon has proposed definitions of “cable system” and “telecommunications facilities” that rewrite the federal law definitions and the jurisdictions’ telecommunications definition</p>

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<p>(Sections 1.7, 1.34, 3.6.3)</p>	<p>law. It does not separately address telephone or telecommunications law or regulations.</p>	<p>MHCRC staff believed that this cable franchise is not the venue for Verizon to debate or interpret the various federal laws governing cable and telecommunications definitions and laws.</p> <p>Compromise Proposal:</p> <ul style="list-style-type: none"> ▶ Agree to the greatest extent possible with Verizon’s proposed definition of Cable System and Telecommunications Facilities. ▶ Include a “non-waiver” agreement so that it’s clear that the neither Jurisdictions nor Verizon are waiving any rights under federal, state or local laws unless explicitly stated in the Franchise. <p>Section 1.7 Cable System or System: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7). Subject to Section 3.6.3 and Section 3.9, the Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services to Subscribers within the Franchise Area and shall not include (i) the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or (ii) Non-Cable Services.</p> <p>Section 1.34 Telecommunications Facilities: Grantee’s facilities providing Telecommunications Services, including its FTTP Network facilities to the extent they are used to provide Telecommunications Services.</p> <p>Section 3.6.3 Neither party waives any of its rights under applicable law, unless otherwise specifically declared in writing in this Franchise Agreement.</p>	<p>contained in local ordinances.</p> <p>Current Proposal: MHCRC staff has provided Verizon’s most current proposed language below, which staff considered in its final proposal:</p> <p>Section 1.7 Cable System or System: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7). Subject to Sections 3.6.3 and 3.9, the Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of a provider of other Non-Cable Services.</p> <p>Section 1.34 Telecommunications Facilities: Grantee’s Telecommunications Services and Information Services facilities, including its FTTP Network facilities.</p> <p>Section 3.6.3 Neither party waives any of its rights under state or federal law, except as otherwise set forth herein.</p>
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PART II: OTHER UNRESOLVED ISSUES

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Franchise Area	COMCAST East County Franchise	MHCRC STAFF Proposed Franchise	VERIZON POSITION (As Understood by Staff)
Section 3.10.2 Modifications of access channels and PEG/I-Net amount	If, after the effective date of this Franchise, a Jurisdiction enters into and authorizes a Cable Services franchise...., the material provisions of such agreement shall be reasonable non-discriminatory and competitively neutral with respect to the material provisions of this Franchise, unless otherwise restricted by law.	Staff was willing to include language about modifications to franchise obligations in two areas -- the number of PEG access channels required and the amount of the PEG/I-Net grant – if a jurisdiction granted a franchise that contained lesser obligations in these areas.	Since this section underwent significant discussion at the most recent franchise negotiation session, staff is uncertain about Verizon’s position on the most recent staff proposal.
Section 9.8.1 Downgrade Charges	Same language as proposed by staff.	Staff believes the distinction in language is that by using "provided", we mean that the exception has to be specifically articulated and set down somewhere (ie. either in state or federal statute, FCC rule, etc). For downgrade charges, staff believed consumers need this protection.	Verizon has proposed using “allowed” which means the exception doesn't have to be explicit; it just hasn't been barred or preempted.
Section 9.9 Discriminatory Practices	Same language as originally proposed by staff in the Public Hearing draft.	Staff believes the non-discrimination language needs to apply to not only cable subscribers but also those seeking to get service.	Verizon wants to limit language to cable subscribers.
Section 14.10.2 Record of Proceeding as Evidence		Staff proposed a “substantial evidence” standard of review – a relatively straightforward standard common in Court reviews of municipal actions, and is a standard supported by the MHCRC legal counsels.	Verizon’s original franchise template proposed that any Court challenge to franchise revocation be a “de novo” proceeding, that is: the Court would consider all evidence as if no prior Jurisdiction revocation proceeding had occurred, and the Jurisdiction’s previous action and process would receive no recognition or deference. Verizon has counter-proposed that the Franchise remain silent on the standard of review.