



MT. HOOD CABLE REGULATORY COMMISSION

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Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

MT. HOOD CABLE REGULATORY COMMISSION

MetroEast Community Media, Studio A

December 7, 2009 Meeting and Public Hearing Minutes -- [APPROVED](#)

SUMMARY MINUTES

MINUTES AS APPROVED AT THE FEBRUARY 22, 2010 MHCRC MEETING.

Call to Order: 6:15 pm

- Roll Call.

Commissioners present: Alan Alexander (Chair), Andrea Cano, Sue Dicile, Norm Thomas, Leif Hansen, John Kilian (6:39pm).

Commissioners absent: Rich Goheen and Clark Santee

Staff: David C. Olson, Director; Mary Beth Henry, Deputy Director; Julie Omelchuck, Program Manager; Ben Walters, Legal Counsel; Rebecca Gibbons, Program Specialist; Sebastian Rodrigues, Financial Analyst; Carol Justice, Office Support Specialist.

- Agenda Review: none.
- Disclosures: Thomas disclosed meeting with Sanford Inouye, Comcast, on topics unrelated to Commission business.
- Public Comment: none.
- Chair Appointments: Chair Alexander summarized his contact with Commissioners about the current committee and liaison structure and membership. Alexander confirmed the appointment of members to the committee and liaison positions as contained in the packet.

- **CONSENT AGENDA**

1. October 19, 2009 Meeting Minutes

MOTION: Dicile moved to approve the Consent Agenda as presented. Cano seconded.

DISCUSSION: none.

VOTE: 5-0 passed.

- **REGULAR AGENDA**

R1. FY2008-09 Year-End MHCRC Financial Report

Rodrigues summarized the financial report contained in the meeting packet:

- The Commission collected \$6,812,293 in cable franchise fees, a 7.8% increase over last year, and \$2,738,696 in PEG fee revenues.
- MetroEast Community Media received \$733,175 in public access funding from the East County Jurisdictions.
- Portland Community Media received \$876,016 in public access funding from the City of Portland and \$44,715 from West Multnomah County franchise fees.
- The Commission awarded \$1,400,000 in Community Access Capital Grants.
- Access Corporation Capital Funds disbursed to Portland Community Media and MetroEast Community Media were \$645,661 and \$559,834 respectively.
- The Commission's Administrative Budget expenditures were within budget.
- Franchise fee revenues increased 7.1% in Portland and 10.1% in East County; continuing the upward trend.

MOTION: Thomas moved to approve the FY2008-09 Year End Financial Report. Dicile seconded.

VOTE: 5-0 passed.

R2. Grantmakers Guiding Principles

Omelchuck said that through staff's membership with GRANTMAKERS of Oregon and Southwest Washington (GOSW) staff is given the opportunity to gain expertise, education and training to support management responsibilities for the Community Access Capital Grant Program. Omelchuck said GOSW began developing collective principles and practices for grantmaking in 2005 that were developed by its members. Omelchuck said GOSW encourages all members to adopt these principles (included in the meeting packet). Omelchuck said staff believes the Commission follows the principles as they relate to the Community Access Capital Grant program and supports the Commission's adoption of the principles. Omelchuck said that if adopted, the principles will be posted on the MHCRC grant homepage.

MOTION: Cano moved to approve the Grantmakers Guiding Principles. Dicile seconded.

VOTE: 5-0 passed.

- Staff Activity Reports and Updates
 - Ascertainment: Omelchuck said staff and CBG Communications, the consultant on the YourVoice initiative, are wrapping up the data collection phase of the project. Omelchuck said the online public survey will remain posted for another two weeks and staff hopes to reach the goal of at least 1,000 participants; 348 individuals have taken the survey so far. Omelchuck said the survey released later than original expected however staff has been able to extend the deadline for participation by a few weeks to compensate for the late start. Omelchuck said is monitoring demographics and that early results indicate outreach to encourage participation by ethnic and cultural groups is still needed.

Kilian arrived (6:39pm).

- FY10-11 Budget Process: Henry said the Finance Committee meets on Wednesday.

- Committee Reports

Finance Committee: none

Community Needs Ascertainment Committee: none

Grant Evaluation Committee: none

I-Net Liaison: none

PCM Liaison: Dicile said PCM has attracted new Board members.

MetroEast Liaison: Kilian said MetroEast's 25th Anniversary event was spectacular.

- New Business

Alexander said the Annual Strategic Planning Retreat is scheduled for Saturday, January 23.

- Franchisee Activity Report: none.

- PEG Provider Activity Report: none.

- Public comment: none.

- Recess: 6:46 pm

Chair Alexander recessed the meeting at 6:46 pm. Alexander asked Commissioners to reconvene in Studio A for the public hearing portion of the agenda scheduled to begin at 7:00pm.

- Reconvene for Public Hearing on the Proposed Transfer of Cable Franchises from Verizon Northwest Inc. to Frontier Communications Corporation (see separate Hearing agenda and materials): 7:00 pm

Chair Alexander reconvened the MHCRC meeting at 7:00pm in Studio A for the public hearing portion of the meeting agenda. The public hearing was telecast live on channel 29 throughout Multnomah County.

Alexander recognized and thanked elected officials and city staff who were in attendance: Gresham Councilor Paul Warr-King.

- **Chair Opening Comments/ Agenda Review**

Chair Alexander thanked MetroEast Community Media for making the live cablecast possible, and for bringing information to the public through later taped showings of the hearing.

Alexander said the issue before the Commission arises from the proposed sale of Verizon's wireline (telephone) and cable assets to Frontier Communications, including the competitive cable television services, marketed as "FiOS", for which Verizon was awarded franchises last year by the Cities of Fairview, Gresham, Troutdale, and Wood Village.

Alexander noted that the proposed sale does not include the assets of Verizon Wireless, which plans to continue providing services throughout this area and Oregon.

Alexander said the sale of assets was announced in May of this year, and various aspects of the sale require Federal, State, and local approval. Alexander said that at the federal level, review and approval is required from the Federal Communications Commission as well as the US Department of Justice. Alexander said that at the state level, the Oregon Public Utility Commission must approve the transfer of Verizon's telephone business to Frontier. Alexander said that at the local level, the City Councils of Fairview, Gresham, Troutdale and Wood Village must approve the transfer of Verizon's cable television franchises to Frontier.

Alexander said the purpose of the hearing is to seek input and comment from the community about the proposed transfer of control. Alexander said the MHCRC's role is to act in an advisory capacity to the City Councils of the four cities, and to consider and make a recommendation on the transfer of the cable television franchises. Alexander said each of the four cities has agreed to take no action on the proposed transfer until the MHCRC has made its recommendation.

Alexander said the MHCRC will take public comment during the hearing, will consider the staff recommendation, and then take action on the MHCRC's own recommendation to the four cities. Alexander said staff has been working on this matter for a number of months, and has developed a recommendation that the MHCRC approve the transfer of the Verizon cable television franchises to Frontier, subject to certain conditions. Alexander said it is his understanding that Verizon and Frontier have agreed to the recommended conditions. Alexander said the staff recommendations and related materials are posted on the MHCRC's website (www.mhcrc.org).

Alexander said representatives of Verizon and Frontier are invited to come forward and present any information they wish to share. Alexander said that after comments from the companies, staff will be invited to discuss their recommendation. Alexander said interested parties and members of the public will be invited to comment, subject to any time limits that may be necessary. Alexander said the public hearing will close following the public comment portion of the agenda and the Commission will move into the work session portion of the agenda, where MHCRC members will deliberate and discuss this issue, ask any questions they may have, and take final action on their recommendation to the City Councils of Fairview, Gresham, Troutdale, and Wood Village.

- **Verizon/Frontier Presentation**

Gene Eng, Verizon, said he is pleased to have reached agreement on the conditions that have led to the staff recommendation for approval of the video franchise transfer application. Eng said Olson and staff have conducted a thorough review of the Form 394 application and our responses to their requests for information. Eng said Frontier is a great partner for Verizon because the company is well respected in the telecommunications industry. Eng said the Commission's recommendation on the transfer is an important part of the process to complete the transfer. Eng said state regulators in Nevada, South Carolina and California have each unanimously approved the sale of Verizon's telecommunications network to Frontier after an extensive review process. Eng said Verizon reached a settlement agreement in Oregon last Thursday with all the parties in the proceeding before the Public Utilities Commission. Eng said the Department of Justice and the Federal Trade Commission have signed off on the transaction. Eng said the transfer of Verizon's video franchises to Frontier has been approved unanimously by twenty franchising authorities in Washington and Oregon. Eng said the Metropolitan Area Cable Commission,

MACC in Washington County, is recommending approval by its member jurisdiction. Eng urged a vote in favor of the staff recommendation to approve the transfer to Frontier.

Ann Burr, Frontier, said that over many months Frontier has been working cooperatively with Olson and staff to evaluate the merits of the transaction between Verizon and Frontier. Burr said Frontier's legal, technical and financial capabilities have been thoroughly evaluated through the formal FCC process. Burr said at least twenty (20) of forty-two (42) cities in Oregon and Washington have approved the transfer so far. Burr said Frontier does business in twenty-four states and represents small and mid-sized cities. Burr said Frontier is not just in rural America, although serving rural areas is one of Frontier's strengths. Burr said Frontier has plenty of experience with FTTH facilities and the company incorporates video into its bundle service packages. Burr said she has worked for Time Warner so she understands the cable business. Burr said the chairman of Frontier came out of the cable business and many other corporate executives have cable industry experience. Burr said Frontier is working on the programming agreements to secure the rights to the program in an attempt to replicate as much of the system channel line up as possible. Burr said Frontier and Verizon are conducting integration planning meetings to make the transition as seamless as possible for the subscriber. Burr said Frontier has a local general manager model, so the executive team anticipates getting to know the local area quickly. Burr said Frontier supports strong customer service policies that the general manager enforces. Burr said many Verizon technicians will become Frontier employees.

- **Staff Presentation**

Olson introduced staff: Mary Beth Henry and Carol Justice and outside legal counsel, Pam Beery (Beery, Elsner & Hammond).

Olson noted the unprecedented degree of cooperation with MACC staff in negotiating with Verizon for the transfer of the cable franchises to Frontier. Olson said the recommendation before the Commission tonight is specific to the cable television franchise transfer. Olson said the transfer of Verizon assets to Frontier is a much larger transaction. Olson said the transfer is a fourteen state, \$8.6 billion transfer of Verizon's wireline assets as a regulated telephone company to Frontier. Olson said Frontier will grow three times its previous size when it absorbs these assets. Olson said the cable television licenses that are the subject of the MHCRC's focus are a small aspect of the overall transaction. Olson said the Commission must consider whether or not the incoming company, the buyer, has the legal, technical and financial capabilities to meet the requirements of the existing franchise agreements. Olson said the Commission's recommendation on the buyer's capabilities will be forwarded to the City Councils in East County for consideration. Olson said that once the City Councils have voted then the local level inquiry process is over. Olson said the transaction is still subject to review and approval at the state, by the Public Utilities Commission, and at the federal level. Olson summarized the results of the negotiations and the details of the action documents that were included in the meeting packet as well as revised documents handed out at the meeting. Olson said all revised documents are available on the MHCRC website. Olson said MACC staff took the lead on reviewing the technical capabilities of Frontier, while MHCRC staff focused on the financial capabilities of Frontier with the help of MHCRC financial consultant, Mike Katz, KFA Services. Olson said MACC did an excellent job of investigating and receiving assurances that customers will receive comparable levels of programming, customer service, video services, etc. should the transfer be approved. Olson said staff completed an extensive financial report that compared the

existing Frontier to the new Frontier under an approved transfer and to Comcast and Verizon to determine a financial prognosis. Olson said staff was able to develop and negotiate conditions that staff believes are tailored and appropriate for this transaction. Olson said the conditions are framed in a way that enables the transaction to move forward but only subject to conditions that safeguard consumers and the Jurisdictions. Olson said many of the staff recommended conditions for transfer are similar to MACC's recommendations. Olson summarized the conditions as outlined in the meeting packet such as provisions for additional financial safeguards (a letter of credit to secure financial performance), for Frontier to assume responsibility for any and all franchise non-compliance issues whether known or unknown and to obtain assurances for comparable programming. Olson said some conditions are unique to the MHCRC franchising area: the letter of credit is for the life of the franchise instead of a limited term and Frontier will be required to provide a conditional guaranty from the parent corporation. Olson said these conditions align with current protections and previous agreements with other companies, and a walk-away clause (detailed in a side letter to the transfer recommendation).

Olson and Alexander thanked MHCRC Verizon Franchise Transfer Liaisons: Norm Thomas & John Kilian.

- **Franchisee Comment**

- ▶ Comcast, Sanford Inouye, said Comcast submitted brief written comments to the parties. Inouye said Comcast does not support or oppose the proposed transfer of the cable franchises from Verizon to Frontier; Comcast reserves its rights and opportunity to address any competitive equity issues.

- **Public Comment**

- ▶ MetroEast, Rob Brading, thanked the Commission for its extraordinary level of commitment to reviewing and addressing the issues of importance to the community such as customer service issues and programming quality. Brading said MetroEast looks forward to a productive and collaborative relationship with Frontier if the merger is approved. Brading said the Verizon franchises were approved a year ago in part because of the corporate strength of Verizon. Brading said Verizon's diversity and depth made it a strong partner in the east Metro communities and their entry into the cable market brought a sophisticated and advanced cable system to the area. Brading said it doesn't take a deep financial or technical analysis to understand that Frontier is not the company that Verizon is or that Comcast is. Brading said Fair Point and Hawaiian Telcom provide cautionary examples of companies that recently purchased Verizon properties and the perils that exist in our current economy. Brading said franchise obligations that directly affect MetroEast were an essential part of the negotiations with Verizon. Brading said MetroEast appreciates the Commission's efforts to negotiate safeguards for MetroEast and for consumers. Brading said MetroEast's concerns are long-term not short-term. Brading said MetroEast is concerned about Frontier's long-term commitment to providing cable service and their ability to meet franchise obligations in part because of their lack of familiarity with cable and because the cable system will provide just a small part of their overall revenue. Brading said MetroEast commends the Commission for its review within the limitations of federal law.

- Close Public Hearing: 7:37pm
- Open Work Session
 - **Commission Discussion**

Chair Alexander opened the floor to discussion.

Thomas said the negotiation process was cooperative and he believes the outcomes effectively address concerns raised by the review of Frontier's capacity to take over the cable franchises.

Kilian said that staff was diligent in its review, effective in its delineation of duties between MHCRC staff and MACC staff, and focused on securing commitments and gaining assurances in order to best serve the local community.

Pam Beery, outside legal counsel, reviewed revised action documents handed out at the meeting. Beery began by reviewing the redline document beginning on page 7. Beery requested dispensation to allow staff the authority to make corrections that are not substantive after the vote so as to not require a new vote.

Thomas asked if Verizon's Gresham store would be maintained. Burr said yes, Frontier would keep the Gresham store location.

Thomas said he is aware that Verizon consumers are concerned about Frontier's ability to maintain the current channel line up. Burr said Frontier is working to secure the rights to the programming agreements.

Kilian asked Frontier to confirm that its goal is to exceed the minimum standards as outlined in the agreement. Burr said Frontier's principles and corporate culture put the customer at the center of the room. Burr said Frontier's policies are based on quarterly measurements of customer satisfaction. Burr said Frontier has internal customer service metrics for installers, call center representatives, managers, etc. Burr said Frontier aims to address consumer concerns, questions, requests, etc. with the first company representative with whom they speak.

Dicile said that in her experience with negotiating cable franchise transfers, the Commission has not limited itself to review of just the legal, technical and financial capabilities of the incoming company. Dicile said the Commission has used the transfer process to reevaluate provisions, negotiate new terms, address stakeholder or consumer needs, etc. Dicile said that in comparing the companies, this transaction represents less apples to apples trading than the Commission has ever considered in the past. Dicile said this transaction is an apple to oranges transfer. Dicile said she appreciates Frontier's corporate philosophy and customer service philosophy. Dicile said she would still have liked to reevaluate the conditions of the franchise. Olson said the Commission has been able in prior transfers to revisit certain portions and elements of the franchises that were out of date, irrelevant, or not working in the manner in which they were intended. Olson said the Commission's ability to do this was subject to the companies' willingness to negotiate with staff. Olson said the transfer conditions as written in

federal law limit the review to legal, technical and financial pieces of the transfer. Olson said the transfer provisions in the Verizon franchises are narrow and limits the scope of what is open to negotiation. Beery said it was made it clear very early on that these companies were not interested in or willing to re-open discussions on franchise provisions. Beery said staff would have liked to re-open discussion based on customer service concerns.

Dicile said Comcast listened to the testimony of twenty-one people primarily from the east county during its transfer from AT&T and reacted to the requests for local needs. Dicile said that in an era of convergence we have telephone companies that don't want to be responsive to local cable regulations based on their business model. Dicile said she thinks it unfortunate that the local Jurisdictions are stuck with provisions that most were unhappy with. Dicile said the MHCRC bled for the sake of competition and the promise of jobs. Dicile said this process, the franchise process with Verizon and the quick sale of assets to Frontier, proves once you start to compromise it's a slippery slope.

MOTION: Thomas moved to adopt Resolution 2009-05 and to recommend approval by the affected jurisdictions, with the associated side letters and conditions considering any insubstantial changes the jurisdictions may need to undertake. Kilian seconded.

DISCUSSION:

In response to a question from Hansen, Olson said the start date in the walk away provision is the service date in each of the four Jurisdictions. Olson said the service date is the date when Verizon first began to offer service to local residents. Olson said the service date for Gresham is November 20, 2008 and for the other three Jurisdictions the first week in February 2009.

Killian believes the walk-away provision and the line of credit requirement are appropriate and in the best interest of the public.

In response to a question from Dicile regarding Verizon customers who don't want to be Frontier customers, Burr said Frontier will honor existing Verizon customer contracts, however if a customer would like out of the contract then Frontier will be flexible.

In response to a question from Dicile regarding channel line-up, Burr said Frontier is working to make its channel line-up offering as similar to current levels as possible. Burr said Frontier's goal is to meet the current conditions and to exceed or expand upon them. Burr said Frontier is committed to continuity of service.

In response to a question from Cano regarding why the transaction was first labeled a 'merger' but now called a 'transfer', Olson said the cable franchises that are with Verizon NW (Verizon Communications Inc) upon transfer approval will move over in tact to Frontier. Olson explained that there is an interim holding company that will control the assets before moving to Frontier. Beery said Katz's financial report clarifies the terms and the transaction process.

VOTE: 6-0 passed.

- Adjourn: 8:31pm

Respectfully submitted,

Rebecca Gibbons
Program Specialist