

COVER SHEET – AGENDA ITEM #R1
For Commission Meeting: November 19, 2018

“Resolution No. 2018-01: Frontier Franchise Extension Recommendation”

Staff Recommendation

Staff recommends that the Commission approve Resolution No. 2018-01: Recommend MHCRC Cities extend term of Frontier cable franchises to December 31, 2022, under certain conditions, and authorize the MHCRC Chair to execute the Settlement Agreement with Frontier similar to that attached as Exhibit B to the Resolution.

Background

The Frontier Cable Franchises with Gresham, Troutdale, Fairview, and Wood Village expire December 31, 2018. Under the IGA, the Jurisdictions retain authority to act on cable franchise renewals or extensions and the MHCRC acts in an advisory role to the Jurisdictions in these instances.

The window, under federal law, for Frontier to notify the Jurisdictions/MHCRC of its intent to renew opened Jan. 1, 2016, and closed June 30, 2016. Frontier did not provide such notification. Subsequently, Frontier requested consideration of extending the current franchise. The MHCRC staff discussed a possible Frontier franchise extension with the Commission at its planning retreat in February 2018. Staff and BBK, the MHCRC cable-specific legal counsel, have negotiated terms of an extension with Frontier. Frontier has confirmed its agreement with extending the term of the Franchises to December 31, 2022, with certain conditions set forth in MHCRC Resolution No. 2018-01 (attached).

Staff is recommending the four-year extension primarily to: 1) Complete a community technology needs ascertainment, which will inform identification of potential public benefits for a renewed franchise; and 2) Restart the renewal window for Frontier as to stagger cable franchise renewal processes with current cable companies to accommodate limited MHCRC staff capacity and legal resources to manage franchise negotiations.

Discussion

Initially, MHCRC staff identified eight issues to possibly address in a franchise extension, following staff review of Frontier complaints, past compliance issues, and current franchise areas in need of updating. Through discussions with Frontier, several issues were resolved. The remaining issues are addressed as conditions for granting Frontier a four-year franchise extension:

PEG Access Channels in High Definition Format

Pursuant to the Franchise, the MHCRC requested the reserve eight access channels be activated by October 1, 2018, in HD format. This was followed by a noncompliance notice on October 3, 2018. Frontier disputed the allegations of non-compliance, but nevertheless Frontier has agreed to settle the dispute in the manner contained in the Settlement Agreement included as Exhibit B to the Resolution.

Relief of “Franchise Grant” Obligation

The MHCRC and Frontier have determined that Frontier wishes to be relieved of its obligation in Section 7.3.1 of the Franchise/s to pay a “Franchise Grant”, and resolve this issue in the manner contained in the Settlement Agreement, further described in Attachment 1.

Clarification of Reporting Requirements

The proposed ordinance/resolution for Jurisdictions’ actions clarifies provisions of Section 8.2 of the Franchise to ensure annual reports provided by Frontier include subscriber numbers for the previous year.

Next Steps

Upon MHCRC approval of Resolution No. 2018-01, staff will forward the recommended documents to Gresham, Troutdale, Fairview, and Wood Village for consideration at a city council meeting. Staff has reserved agenda time on council agendas for this action and will inform the Jurisdiction’s representative when the agenda date is confirmed.

Attachments:

MHCRC Resolution No. 2018-01

Res. Exhibit A: Draft Model Franchise Term Extension Ordinance

Res. Exhibit B: MHCRC-Frontier Settlement Agreement, with Attachment 1

Prepared By: Julie S. Omelchuck, Scott Ellertson
November 13, 2018

**Before the
Mt. Hood Cable Regulatory Commission
111 SW Columbia, Suite 600, Rivers Conference Room
Portland, OR 97201**

Recommend MHCRC Cities)	
extend term of Frontier cable franchises)	Resolution No. 2018-01
to December 31, 2022 under certain)	
conditions; recommend)	Adopted by the Commission:
form of extension)	<i>For consideration: Nov. 19, 2018</i>

Section 1. Findings.

- 1.1 Authority. The Mt. Hood Cable Regulatory Commission (“MHCRC” or "Commission") was created by Intergovernmental Agreement (dated December 24, 1992) (“IGA”) to carry out cable regulation and administration on behalf of Multnomah County and the cities of Gresham, Fairview, Portland, Troutdale, and Wood Village ("the Jurisdictions"). Among other things, the Commission acts in an advisory capacity to the Jurisdictions in connection with renewal or extension of any cable franchise of the Jurisdictions. As set forth in the IGA, the Jurisdictions have reserved full authority to act on their own behalf regarding any proposed renewal or extension of the term of a cable franchise. However, each Jurisdiction has agreed to take no action in these areas until the Commission has had an opportunity to give prior consideration to the matter.
- 1.2 Cable franchises issued to Verizon Northwest, Inc. beginning November 2008 and expiring on December 31, 2018. The Cities of Gresham, Fairview, Troutdale and Wood Village (“Cities”) granted cable television franchises beginning November 18, 2008 (“Franchise/s”) to Verizon Northwest, Inc. (“Grantee”), a subsidiary of Verizon Communications, Inc., (“Verizon”) for franchise terms expiring on December 31, 2018. At Verizon’s request, the Franchise/s granted by the Cities of Fairview, Troutdale and Wood Village were granted as addendums to the Franchise granted by the City of Gresham and are substantially identical.
- 1.3 Transfer of control of the Franchise/s and the Grantee from Verizon to Frontier Communications Corporation beginning July 2010. The Grantee and Franchise/s granted by the Cities were duly transferred to and accepted by Frontier Communications Corporation and all appropriate Frontier subsidiaries (collectively “Frontier”) with the approval of each of the Cities in 2010 on the MHCRC’s recommendation per MHCRC Res. 2009-05, adopted by the MHCRC December 7, 2009. Frontier renamed the Grantee Frontier Communications Northwest Inc. after transfer.
- 1.4 MHCRC staff reports that the public interest will be served by extending the terms of the Franchise/s to December 31, 2022. As noted earlier, the Franchise/s are expiring on December 31, 2018. The Franchise/s extension and related settlement will resolve certain outstanding issues and concerns to address some pressing community needs discussed

below, while also allowing time for orderly completion of the Community Technology Needs Ascertainment. The Ascertainment will provide the Franchise renewal negotiators with more detailed assessments of the needs and priorities of the residents within the Franchise/s service area.

- 1.5 PEG Access Channels in High Definition Format. Pursuant to the Franchise/s, on June 1, 2018, the MHCRC requested the reserve eight (8) access channels to be activated by October 1, 2018, as additional PEG Access Channels in HD format. This was followed by a noncompliance notice on October 3, 2018. Frontier disputed the allegations of non-compliance, but nevertheless the MHCRC and Frontier desire to resolve these non-compliance issues at the same time as the extension under the terms of the settlement set forth in Exhibit B
- 1.6 Relief of “Franchise Grant” Obligation. The MHCRC and Frontier have determined that the Grantee wishes to be relieved of its obligation in Section 7.3.1 of the Franchise/s to pay a “Franchise Grant”, and the MHCRC is willing to accept the terms of the settlement set forth in Exhibit B.
- 1.7 Clarification of Reporting Requirements in Franchise/s. The MHCRC finds that the provisions of Section 8.2 of the Franchise/s need to be clarified to ensure annual reporting requirements include subscriber counts for the MHCRC service area. While the Grantee has provided this information for 2017, an appropriate adjustment to the language in Section 8.2 should be included in any final action consenting to the Franchise/s extension to ensure reporting continues in future years.
- 1.8 MHCRC staff has verified that Frontier has no objection to extending the terms of the Franchises to December 31, 2022, on the terms set forth in Exhibit A, and to settling related matters on the terms set forth in Exhibit B.
- 1.9 MHCRC Public Meeting. The MHCRC considered the proposed extension at its public meeting on November 19, 2018, to receive input and comment on the proposed extension from Frontier, the public, cable subscribers and interested parties, and to make a final recommendation to the Cities concerning the proposed extension.

Now, therefore, the Commission resolves:

Section 2.

- 2.1 The Commission recommends that the Cities approve by ordinance or resolution, as applicable, an extension of the Frontier Franchise/s to December 31, 2022 subject to certain conditions.
- 2.2 In furtherance of this recommendation, the Commission recommends that the Cities approve an ordinance or resolution, as applicable, substantially similar to that attached as Exhibit A hereto.

2.3 The Commission approves the settlement agreement and authorizes the Commission Chair to sign the agreement in substantially the same form as presented in Exhibit B hereto.

ADOPTED BY THE COMMISSION on November 19, 2018.

Leif Hansen, Chair

Reviewed as to Form:

Mark Wolf, Legal Counsel

Attachments:

Exhibit A Recommended form of extension ordinance (or resolution); with condition and model acceptance form.

Exhibit B Settlement Agreement between MHCRC and Frontier on behalf of itself and Grantee

EXHIBIT A

Recommended Model Ordinance (or Resolution) for Frontier Cable Franchise Term Extension
with Model Acceptance Form (Exhibit 1)
Per MHCRC Res. 2018-01 (adopted November 19, 2018)
For consideration by MHCRC Jurisdiction Elected Bodies

Extend term of Frontier cable franchise (Ordinance or Resolution)

The City ordains (or resolves):

Section 1. RECITALS

The City finds:

1. The Mt. Hood Cable Regulatory Commission (“MHCRC” or “Commission”) was created by an Intergovernmental Agreement dated December 24, 1992) (the “IGA”) to carry out cable regulation and administration on behalf of Multnomah County and the cities of Gresham, Fairview, Portland, Troutdale, and Wood Village (the “Jurisdictions”). Among other things, the Commission acts in an advisory capacity to the Jurisdictions in connection with renewal or extension of any cable franchise of the Jurisdictions. As set forth in the IGA, the Jurisdictions have reserved full authority to act on their own behalf regarding any proposed renewal or extension of the term of a cable franchise. However, each Jurisdiction has agreed to take no action in these areas until the Commission has had an opportunity to give prior consideration to the matter.
2. The cable franchises were granted by the Cities of Fairview, Gresham, Troutdale, and Wood Village (“Cities”) to Verizon Northwest, Inc. (“Grantee”) effective November 18, 2008 (“Franchise/s”), and the Grantee and the Franchise/s were duly transferred to and accepted by Frontier Communications Corporation and all appropriate Frontier subsidiaries (collectively “Frontier”) with the approval of the Cities in 2010. After the transfer, Frontier renamed the Grantee Frontier Communications Northwest Inc.
3. The Franchise/s will expire on December 31, 2018.
4. At a meeting held November 19, 2018, the MHCRC recommended the Cities grant an extension of the term of the Franchise/s to December 31, 2022, on certain conditions.
5. The public interest will be served by granting an extension of the term of the City Franchise to December 31, 2022, on certain conditions.
6. MHCRC staff has verified that Frontier has no objection to extending the term of the City Franchise to December 31, 2022, on certain conditions.

NOW, THEREFORE, the City (directs or resolves):

- (a) Subject to the conditions set out in the acceptance form attached as Exhibit A to this (Ordinance or Resolution), the City approves an extension of the term of the cable franchise granted by City to Frontier, effective December XX, 2018 (“Franchise/s”) from January 1, 2019 to December 31, 2022.
- (b) Section 3.3.1 of the Franchise/s is amended to delete the date “December 31, 2018” and substitute the date “December 31, 2022”.
- (c) Section 8.2 of the Franchise/s is amended to add at the end of the last sentence the following: “, and reporting annual subscriber counts.”
- (d) All other terms and provisions of the Franchise/s, together with all related documents and agreements pertaining thereto, shall continue in effect without modification.
- (e) On or before January 1, 2019 Frontier Communications Corporation, as Guarantor of the Franchise/s, shall file a written, executed acceptance of this Ordinance, meeting the approval of the City Legal Counsel. The written acceptance shall be in the form attached hereto as Exhibit 1.
- (f) The executed acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained therein.
- (g) The failure, refusal or neglect by Frontier Communications Corporation, as Guarantor of the Franchise, to file such written acceptance by such time shall constitute an abandonment and rejection of the rights and privileges conferred hereby and this (ordinance or resolution) shall thereupon be null and void.

(Emergency Clause – optional if needed to ensure passage & acceptance prior to January 1, 2019)

Section 2. The City declares that an emergency exists because the current Frontier cable franchise expires December 31, 2018; therefore, this (ordinance or resolution) shall be in full force and effect from and after its passage.

EXHIBIT 1 – MODEL ACCEPTANCE ORDINANCE
Acceptance of Extension Of Term Of Cable Franchise
Frontier Communications/Jurisdiction

CITY NAME
c/o City contact
City Address
City, State Zip

cc to: Mt. Hood Cable Regulatory Commission
111 SW Columbia St, Suite 600
Portland, OR 97201

This is to advise the City that Grantee Frontier Communications Northwest Inc. and Grantee's Guarantor Frontier Communications Corporation hereby unqualifiedly accept the provisions applicable to them of (Ordinance or Resolution) No. _____, (passed or adopted) by the City on the ____ of ____, 2018, extending the term of the cable franchise granted by the Cities of Fairview, Gresham, Troutdale, and Wood Village were duly transferred to Frontier Communications Corporation (effective January 5, 2010) ("Franchise/s") to December 31, 2022 and agree, as applicable, to abide by the following terms and conditions:

- a. In all respects and without exception, Grantee and Grantee's Guarantor Frontier Communications Corporation agree and acknowledge that the extension of the term of the Franchise/s will not affect, diminish, impair or supersede the binding nature of the existing valid ordinances, franchises, resolutions and agreements applicable to operation of the cable system, including, but not limited to any existing guarantees, and that during the term of the extension Grantee shall comply with each and every provision of the Franchise/s including all lawful applicable ordinances, orders, contracts, agreements, commitments, side letters, and regulatory actions taken pursuant thereto, as applicable, whether prior or subsequent to the date of the term extension that is the subject of this Acceptance.
- b. Grantee and Grantee's Guarantor Frontier Communications Corporation do not waive and expressly reserve all legal rights they may have under the current Franchise/s and applicable law, and Grantee and Grantee's Guarantor Frontier Communications Corporation specifically acknowledge and expressly accept that the City does not waive and expressly reserves all legal rights and authority in regard to any and all non-compliance under the Franchise/s that may now exist or may later be discovered to have existed during the term of the Franchise/s, whether prior or subsequent to the date of the term extension that is the subject of this Acceptance.

**FRONTIER COMMUNICATIONS
NORTHWEST INC.**

STATE OF _____)
) ss.
County of _____)

By _____
Name:
Title:

This Acceptance was acknowledged before
me on the _____ day of _____,
2018, by _____
as _____, a
duly authorized officer of Frontier
Communications Northwest Inc.

Date: _____, 2018

Notary Public for _____
My Commission Expires _____

**FRONTIER COMMUNICATIONS
CORPORATION**

STATE OF _____)
) ss.
County of _____)

By _____
Name:
Title:

This Acceptance was acknowledged before
me on the _____ day of _____,
2018, by _____
as _____, a
duly authorized officer of Frontier
Communications Corporation

Date: _____, 2018

Notary Public for _____
My Commission Expires _____

APPROVED AS TO FORM:

City Legal Counsel

EXHIBIT B
SETTLEMENT AGREEMENT BETWEEN MT. HOOD CABLE REGULATORY
COMMISSION AND FRONTIER COMMUNICATIONS CORPORATION BY AND ON
BEHALF OF ITSELF AND THE GRANTEE

WHEREAS, this Agreement is between Frontier Communications Corporation by and on behalf of itself and of the Grantee as defined below (“Frontier”) and the Mt. Hood Cable Regulatory Commission (“MHCRC” or “Commission”). Frontier and the MHCRC may be individually referred to hereafter as a “Party” or jointly as the “Parties”;

WHEREAS, the Commission was created by Intergovernmental Agreement (dated December 24, 1992) (“IGA”) to carry out cable regulation and administration on behalf of Multnomah County and the cities of Gresham, Fairview, Portland, Troutdale, and Wood Village (“the Jurisdictions”);

WHEREAS, the Cities of Gresham, Fairview, Troutdale and Wood Village (“Cities”) granted cable television franchises beginning November 18, 2008 (“Franchise/s”) to Verizon Northwest, Inc. (“Grantee”), a subsidiary of Verizon Communications, Inc., (“Verizon”) for franchise terms expiring on December 31, 2018;

WHEREAS, the Grantee and Franchise/s granted by the Cities were duly transferred to and accepted by Frontier Communications Corporation and all appropriate Frontier subsidiaries (collectively “Frontier”) with the approval of each of the Cities in 2010 on the MHCRC’s recommendation per MHCRC Res. 2009-05, adopted by the MHCRC December 7, 2009;

WHEREAS, Frontier renamed the Grantee Frontier Communications Northwest Inc. after transfer;

WHEREAS, MHCRC and Frontier have negotiated the terms of a four (4) year extension of the Franchise/s, which MHCRC has recommended to the Cities for approval;

WHEREAS, during extension negotiations the MHCRC has alleged non-compliance issues related to the provision of PEG Access Channels in high definition (HD) and issued related non-compliance notice;

WHEREAS, Frontier has responded to the non-compliance notice and disputes the allegations of non-compliance;

WHEREAS, the MHCRC and Frontier have also determined that Frontier wishes to be relieved of certain additional obligations that are otherwise required under the Franchise/s, and the MHCRC is willing to relieve Frontier of those obligations in exchange for the benefits herein;

WHEREAS, the MHCRC and Frontier desire to resolve certain non-compliance issues related to the provision of HD PEG Access Channels, and to otherwise address the matters described above;

NOW THEREFORE, in exchange for the mutual benefits and undertakings described herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. On or before January 31, 2019, Frontier will activate the reserve eight (8) access channels as additional PEG Access Channels in HD format. Further, Frontier waives its right to a due process hearing under Section 14.6 of the Franchise/s and acknowledges and agrees that if the HD format PEG Access Channels are not activated by January 31, 2019, the MHCRC may impose fines in the amount of \$500.00 (five hundred dollars) per day, and/or exercise other remedies available under Section 14 of the Franchise/s without further notice.

2. The MHCRC and Frontier agree that: (a) MHCRC will not enforce Frontier's obligation to pay the Franchise Grant set forth in Section 7.3.1 of the Franchise/s during the extension term, and (b) Frontier shall provide to MetroEast Community Media, without charge: (i) on or before the 90th day following adoption of Franchise extension ordinance or resolution by all of the Cities, construct and activate, and (ii) through the term of the extension, provide the connections, Ethernet Virtual Private Line services and equipment as shown and described in Attachment 1: Frontier-MetroEast Logic Diagram (collectively the "PEG Connections"). Further, Frontier acknowledges and agrees that if Frontier fails to fulfill its obligations with regard to the PEG Connections, the MHCRC may impose fines in the amount of \$500 (five hundred dollars) per day, up to an annual cap of \$40,000 or exercise other remedies available under Sections 14 of the Franchise/s after providing notice and an opportunity to cure, and Frontier waives its right to a due process hearing under Section 14.6 of the Franchise/s and further agrees that any fines imposed hereunder would not count towards any cap on fines in the Franchise/s.

3. Frontier agrees that its commitments in this Agreement are provided voluntarily.

4. This Agreement shall inure to the benefit of, and shall be binding on the Parties' respective successors and assigns.

5. This Agreement may not be modified or amended, nor any of its terms waived, except by a writing signed by duly authorized representatives of the Parties.

6. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon without regard to conflicts of law principles. All actions or suits brought hereunder or arising out of this Agreement shall be brought in the appropriate State or Federal courts in Oregon.

7. This Agreement has been negotiated by the MHCRC under its authority to carry out cable regulation and administration on behalf of the Cities. The Cities shall be deemed third-party beneficiaries of this Agreement and shall be entitled to enforce the same with regard to their respective interests.

8. This Agreement is freely and voluntarily entered into by the Parties, without any duress or coercion, and after each Party has consulted with its counsel. Each Party hereto has carefully and completely read all of the terms and provisions of this Agreement. Each Party acknowledges that this is a full, complete and final mutual release as set forth previously herein.

9. Each Party covenants and agrees that it will not sue or bring or assert any action, claim or cause of action, in any jurisdiction or forum against the other Party asserting any claim waived or released by this Agreement. Each Party may plead this Agreement as a complete defense and bar to any claim waived or released by this Agreement, and, in such event, the Party bringing such barred action, claim, or demand shall indemnify and hold the other party harmless from and against any and all costs and expenses arising therefrom (including reasonable attorneys' fees and expenses incurred in connection therewith). For the avoidance of doubt, each Party acknowledges and accepts that the other Party may participate in the FCC's Second Further Notice of Proposed Rulemaking proceeding in MB Docket No. 05-311 (*In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992* (FCC 18-131)) without violating the covenants and agreements in the prior sentences. If any provision of this Agreement is found to be unenforceable in a final judicial or administrative proceeding, the Parties shall enter into good faith negotiations with the intent of reaching an agreement that would place the Parties substantially in the same position as if this Agreement were fully enforceable. If the negotiations do not result in agreement between the parties within sixty days from the date of the final decision referred to in the preceding sentence, then either Party may call for binding arbitration within thirty days. Such arbitration shall have the goal of placing the Parties in the same positions they would occupy if this Agreement had been fully enforceable. The Parties shall select an independent, mutually acceptable arbitrator, who shall have available the full range of appropriate remedies. The arbitrator's decision shall be final and binding on both parties. The parties will each pay their own costs to appear before the arbitrator and will share the arbitrator's costs equally.

10. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto,

11. This Agreement shall be effective on the date when it has been executed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by duly authorized representatives of each Party as follows:

Mt. Hood Cable Regulatory Commission

Frontier Communications Corporation

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

Attachment 1 - Frontier / MHCRC Settlement Agreement

Ethernet ELine service as Ethernet Private Line (EPL) for MetroEast:

1. Two (2) 1000 Mbps Ethernet Access Circuits to Two (2) Locations
 - a. 829 NE 8th, Gresham OR 97030 with NPA NXX 503 667
 - b. 484 SE 187th, Gresham OR 97233 with NPA NXX 503 823
2. One (1) 1000 Mbps Gold Ethernet Virtual Circuit, Port based, between 829 NE 8th, Gresham OR 97030 and 484 SE 187th, Gresham OR 97233.

Ethernet ELine service as Ethernet Private Line (EPL) for MetroEast:

1. One (1) 1000 Mbps Ethernet Access Circuits to One (1) Location
 - a. 829 NE 8th, Gresham OR 97030 with NPA NXX 503 667
2. One (1) 1000 Mbps Silver Ethernet Virtual Circuit between 829 NE 8th, Gresham OR 97030 and Frontier's Internet POP

