

COVER SHEET – AGENDA ITEM #R2

For Commission Meeting: November 19, 2018

“Resolution No. 2018-02: Cascade Access Franchise Extension Recommendation”

Staff Recommendation

Staff recommends that the Commission approve Resolution No. 2018-02: Recommend Multnomah County extend term of Cascade Access Cable Franchise to June 30, 2019; recommend form of extension.

Background

The Cascade Access Cable Franchise with Multnomah County expires 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 Cascade Access to notify the County/MHCRC of its intent to renew opened Jan. 1, 2016, and closed June 30, 2016. Cascade Access did not provide such notification. Subsequently, Cascade Access verbally informed MHCRC staff on May 23, 2018, of their intent to discontinue offering cable services and requested a six-month Franchise extension to provide time to notify subscribers, remove cable facilities from County right-of-way, and complete any road restoration as necessary.

Next Steps

Upon MHCRC approval of Resolution No. 2018-02, staff will forward the recommended documents to Multnomah County for consideration at a County Commission meeting. Staff is in the process of reserving agenda time and will inform Commissioner Studenmund (the County’s representative) when the agenda date is confirmed.

Attachments:

MHCRC Resolution No. 2018-02

Exhibit A: Cascade Access Franchise Term Extension Model Ordinance

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

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

DRAFT

Recommend the Board of Multnomah County)	Resolution No. 2018-02
Commissioners extend term of Cascade Access)	
cable franchise to June 30, 2019;)	Adopted by the Commission:
recommend form of extension)	<i>For consideration: November 19, 2018</i>

Section 1. Findings.

- 1.1 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 The Multnomah County Board of Commissioners granted a cable franchise agreement (“Franchise”) to Cascade Access, LLC, on July 17, 2008, by Resolution No. 08-105, which term expires on December 31, 2018.
- 1.3 Cascade Access, LLC, represented to the MHCRC staff that it will no longer operate a cable system to provide cable TV services, and therefore it will not seek renewal or extension of the Franchise except for a limited request for a 6-month Franchise extension in order to conduct orderly disconnects with cable subscribers and remove tangible components of its cable system from County streets, roads and highways by June 30, 2019.
- 1.4 MHCRC staff and Cascade Access, LLC, have agreed to extend the term of the Franchise to June 30, 2019.
- 1.5 The public interest will be served by extending the term of the Franchise to June 30, 2019.
- 1.6 The MHCRC considered the proposed extension at its public meeting on November 19, 2018, to receive input and comment on the proposed extension from Cascade Access, the public, cable subscribers and interested parties, and to make a final recommendation to the County concerning the proposed extension.

Now, therefore, the MHCRC resolves:

Section 2.

- 2.1 The MHCRC recommends that the Multnomah County Board of Commissioners approve by ordinance, a final and limited extension of the current term of the Cascade Access, LLC, Franchise from December 31, 2018, to June 30, 2019.

- 2.2 In furtherance of this recommendation, the MHCRC recommends that the Multnomah County Board of Commissioners approve an ordinance substantially similar to that attached as Exhibit A hereto.

ADOPTED BY THE COMMISSION on November 19, 2018.

Leif Hansen, Chair

Reviewed by:

Mark Wolf, Legal Counsel

Attachment:

Exhibit A Recommended form of extension ordinance; with model acceptance form.

EXHIBIT A

Recommended Model Ordinance for Cascade Access Cable Franchise Term Extension with
Model Acceptance Form (Exhibit 1)
Per MHCRC Res. 2018-02 (adopted November 19, 2018)
For consideration by the Multnomah County Board of Commissioners

Extend term of Cascade Access cable franchise Ordinance #

Multnomah County Ordains:

Section 1. RECITALS

The Multnomah County Board of Commissioners Finds:

1. The Mt. Hood Cable Regulatory Commission (“MHCRC”) 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 MHCRC 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 MHCRC has had an opportunity to give prior consideration to the matter.
2. The Multnomah County Board of Commissioners granted a cable franchise agreement (“Franchise”) to Cascade Access, LLC, on July 17, 2008, by Resolution No. 08-105, which term expires on December 31, 2018.
3. At a meeting held November 19, 2018, the MHCRC adopted Resolution No. 2018-02, recommending the Multnomah County Board of Commissioners grant an extension of the term of the Franchise to June 30, 2019.
4. The MHCRC determined that the public interest will be served by granting a Franchise extension, as Cascade Access, LLC, has represented to the MHCRC that it will not seek renewal or extension of the Franchise except for the limited extension necessary to conduct orderly disconnects with cable subscribers, remove tangible components of its cable system from County Streets, and restore the County Streets by June 30, 2019.

NOW, THEREFORE, the Multnomah County Board of Commissioners (resolves/directs):

- (a) A limited extension of the term of the cable franchise granted to Cascade Access LLC, on July 17, 2008, by Multnomah County Resolution No. 08-105, through and including June 30, 2019 is granted to allow Cascade Access LLC to conduct orderly disconnects with cable subscribers and remove tangible components of its cable system from County Streets and restore the County Streets.
- (b) Section 1.2 of the Franchise is amended to delete the date “December 31, 2018” and substitute the date “June 30, 2019”.
- (c) All other terms and provisions of the Franchise, together with all related documents and agreements pertaining thereto, shall continue in effect without modification.
- (d) On or before January 1, 2019, Cascade Access LLC shall file a written, executed acceptance of this Ordinance, meeting the approval of the Multnomah County Board of Commissioners’ Legal Counsel. The written acceptance shall be in the form attached hereto as Exhibit 1.
- (e) The executed acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained therein.
- (f) The failure, refusal or neglect by Cascade Access LLC to file such written acceptance by such time shall constitute an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void.
- (g) Upon expiration of the Cascade Access LLC Franchise on June 30, 2019, all of Cascade Access LLC’s rights under the Franchise shall immediately cease and be divested by operation of Section 20.5 of the Franchise.

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

Section 2. The Multnomah County Board of Commissioners declares that an emergency exists because the current Cascade Access LLC cable franchise expires December 31, 2018; therefore, this ordinance shall be in full force and effect from and after its passage.

EXHIBIT 1
ACCEPTANCE OF EXTENSION OF TERM OF CABLE FRANCHISE
Cascade Access LLC/Multnomah County, Oregon

Multnomah County, Oregon
Jenny M. Madkour, Multnomah County Attorney
501 SE Hawthorne Boulevard, Suite 500
Portland, OR 97214

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

This is to advise the Multnomah County Board of Commissioners that Grantee Cascade Access LLC hereby unqualifiedly accept the provisions applicable to them of Ordinance No. _____, adopted by the Multnomah County Board of Commissioners on the _____ of _____, 2018, extending the term of the cable franchise granted by Multnomah County, Oregon to June 30, 2019 and agree, as applicable, to abide by the following terms and conditions:

- a. In all respects and without exception, Cascade Access LLC (“Grantee”) agrees and acknowledges that the extension of the term of the Franchise 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 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 does not waive and expressly reserve all legal rights they may have under the current Franchise and applicable law, and Grantee specifically acknowledges and expressly accepts that Multnomah County, Oregon does not waive and expressly reserves all legal rights and authority in regard to any and all non-compliance under the Franchise that may now exist or may later be discovered to have existed during the term of the Franchise, whether prior or subsequent to the date of the term extension that is the subject of this Acceptance.
- c. Grantee acknowledges that it is obligated and will abide by Section 20.5 of the Franchise, which provides that Grantee shall remove its Facilities from the Streets and restore the Streets to such condition as the County may require; that if Grantee should fail to do so,

then the County may perform the work and collect the cost thereof from the Grantee; that the cost thereof shall be a lien upon the system of the Grantee and a set-off against any sums owed Grantee by County; and further that all of Grantee's rights under the Franchise shall immediately cease and be divested as of the expiration of the Franchise on June 30, 2019.

CASCADE ACCESS LLC

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 Cascade Access LLC.

Date: _____, 2018

Notary Public for _____
My Commission Expires _____

APPROVED AS TO FORM:

County Attorney for Multnomah County, Oregon