

## **MACC STAFF REPORT**

### **FRONTIER COMMUNICATIONS TRANSFER OF CONTROL TO NORTHWEST FIBER, LLC**

Prepared by the staff of the Metropolitan Area Communications Commission  
October 2019

#### **MACC RECOMMENDS APPROVAL OF THE FRONTIER/NW FIBER TRANSFER OF CONTROL**

At their October 1<sup>st</sup> meeting, the Board of Commissioners (Commission) of the Metropolitan Area Communications Commission (MACC), voted to recommended that your jurisdiction, and the other ten affected MACC members (affected jurisdictions), approve the Transfer of Control (Transfer) of the Frontier Communications Corporation cable television franchise to NW Fiber, LLC.

#### **MACC Intergovernmental Agreement and the Role of Your Jurisdiction**

Each jurisdiction is a member of the MACC Intergovernmental Agreement (IGA). The IGA places the responsibility with MACC to review any proposed change of ownership or control. The MACC Commission makes a final recommendation to the affected jurisdictions to either approve or deny the proposed transaction. All of the affected jurisdictions must accept the Commission's recommended action in order for it to become effective – if any one of the affected jurisdictions votes no, it vetoes it for the others.

MACC staff provides the Commission's recommendation to each of the affected jurisdictional governing bodies, at which point each jurisdiction will decide whether to accept or reject the Commission's recommendation.

In addition to MACC staff, representatives of Frontier and NW Fiber will be present at each Council meeting to answer any questions.

#### **Background**

On July 19, 2019 Frontier Communications Inc. (Frontier) filed an FCC Form 394 Application (Application) with MACC on behalf of eleven member jurisdictions to transfer control of the franchise agreement to a new company, Northwest Fiber, LLC

(Northwest Fiber). Only eleven of MACC's 15 jurisdictions are served by Frontier Communications because the company's service area was predetermined by its telephone service area. The franchise holder, Frontier Communications Northwest, Inc. would not change, only the controlling interest in that franchise holder.

The affected jurisdictions are the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, Tualatin and Washington County. Frontier serves approximately 12,000 subscribers in the MACC area, providing about 12% of the cable franchise revenue received by all 15 MACC member jurisdictions.

All MACC members vote at the Board of Commissioners meeting, regardless of the jurisdiction they represent. As with all major decisions, if any individual affected jurisdiction's governing body fails to approve the transfer, it fails for all member jurisdictions and the Commission would need to take further action to restart the process.

### **The Proposed Transaction**

On May 29<sup>th</sup> 2019 Frontier Communications Corporation announced they were selling their operations and all associated assets in Washington, Oregon, Idaho, and Montana to WaveDivision Capital, LLC, Northwest Fiber's parent company, in partnership with Searchlight Capital Partners, LLC for \$1.4 billion. Northwest Fiber, LLC will acquire control of Frontier Communications Northwest Inc., the cable franchise holder in the MACC area, among other Frontier-controlled subsidiaries. The transaction includes all of Frontier's assets, including the operations, networks and systems that currently provide and support voice, video and data service in the area. Other areas involved include systems in Multnomah and Yamhill Counties as well as parts of Idaho, Montana and Washington.

Northwest Fiber will essentially substitute itself for Frontier in all aspects of the business, including telecommunications services that MACC does not regulate. The transaction is expected to close sometime in the first quarter of 2020.

### **MACC Review Process**

MACC's responsibility, set forth in federal law and supplemented by the terms of the franchise agreement with Frontier, is to determine whether the incoming company has the legal, financial, and technical ability to fulfill the terms of the franchise.

In general terms, the question is can Northwest Fiber continue to:

- Establish itself legally with all relevant regulatory bodies;
- Make franchise fee payments and uphold other financial requirements of the franchise; and
- Provide cable service as well or better than Frontier, including providing customer service that meets the MACC customer service standards.

The FCC places a tight and difficult timeline on local government and companies to complete the approval process within 120 days from the date of a complete application. MACC and Northwest Fiber may mutually waive that timeline. That has typically been the arrangement in all previous transfers in the MACC area going back to 1999, mainly due to the sheer number of governing bodies that must act, and the need to get on busy City Council and County Commission agendas. MACC and Northwest Fiber have agreed to extend the timeline until December 31, 2019.

If all the affected MACC jurisdictions do not act by December 31, 2019, the transfer may be deemed approved by Federal Law.

MACC began its review of the proposed transfer as quickly as possible. While federal law provides up to 30 days to present questions regarding the qualifications of the incoming company, MACC acted within 16 days, culminating in a Request for Information (RFI) sent to Northwest Fiber on August 6, 2019. MACC noted that Northwest Fiber's transfer application was incomplete, failing to include complete and required information. Northwest Fiber responded, in part, within 10 days. Because Northwest Fiber again failed to fully answer some questions and provided redacted and incomplete documents in response, MACC sent a second RFI on August 29 (and a third on September 20). Northwest Fiber's final response was received September 23rd. As stated previously, the MACC Commission met on October 1, 2019 and voted to approve the transfer, with conditions as described below.

### **Legal Qualifications**

Frontier Communications will continue to be the Franchisee after the completion of the transfer to Northwest Fiber. Northwest Fiber must gain the approval of local telephone authorities, state public utility commissions, Federal Communications Commission (FCC), and Department of Justice to complete their transaction.

At this time, the company is still going through the appropriate legal approvals by the Oregon PUC and the Oregon Secretary of State's office. Those approvals are expected by the time the transaction closes in first quarter 2020.

**MACC Conclusion:** Assuming Northwest Fiber obtains the required local, state, and federal authorizations to operate Frontier, we see no legal reasons why the transfer should not take place.

### **Financial Qualifications**

In considering a company's financial qualifications to own and operate a cable system, MACC was first concerned about the incoming company's ability to finance the transaction and to manage its new debt load. MACC was also concerned that a heavily leveraged debt could result in adverse effects on member jurisdictions (i.e., late or non-payment of franchise fees) or subscribers (i.e., higher service rates, poor customer service, delays in installing plant in new areas, or poor program/transmission quality).

Because Northwest Fiber is new, MACC had very little to look at to determine whether the company will have the ability to fulfill its franchise obligations. Northwest Fiber's \$1.4 billion purchase of the Frontier systems in this business deal is financed in part through a loan of \$650 million and \$250 million in bond financing. Northwest Fiber assured that it had "binding commitment letters" for the loans and it will have approximately \$300 million available following the close of the transaction.

Northwest Fiber has stated to MACC that it "will be in a substantially better financial position to operate the network than Frontier is currently." Given Frontier's struggles, it is not difficult to believe that assertion.

Additionally, MACC's sister jurisdiction, Mount Hood Cable Regulatory Commission (MHCRC), engaged Front Range Consulting, Inc., to conduct a review and evaluation of the financial information provided by Northwest Fiber, and to provide a report on Northwest Fiber's financial qualifications. The report suggested Northwest Fiber would be financially viable and stable, with the caveat that market and economic conditions are always variable. The report also recommended a guarantee and form of security (bond). As a result, one of the conditions of approval of the application is that Northwest Fiber submits a bond sufficient to guarantee franchise fee payments and other requirements of the franchise for a term of the franchise (through 2022). MACC and Frontier mutually agreed to a similar arrangement when that company began

service in 2010. In addition, MACC negotiated a guarantee of franchise performance from Northwest Fiber's parent company.

**MACC Conclusion:** In recommending the approval of the application with conditions, MACC is somewhat relying on the financial expertise of its sister regulatory agency in Multnomah County, which, as described above, has examined the financial qualifications of Northwest Fiber and found them viable as a new company. Nevertheless, both MHCRC and MACC asked for and received a guarantee of financial performance, along with an irrevocable letter of credit or performance bond for the benefit of the clients of the franchise obligations of Northwest Fiber.

### **Technical Qualifications**

MACC received sufficient information to recommend approval on this issue. Essentially, current Frontier staff and resources will continue to be used to provide cable service and other related services. These include customer service call centers, which will remain in Washington. There are plans to consolidate those operations. There is no indication that one ongoing complaint to MACC, the lack of a local, physical office, will be remedied; it may never be, because there is no franchise requirement for a local, physical office.

Another significant concern, the lack of company experience in managing the peculiarities of *cable television franchises* and retention of contracts with programming providers, was alleviated by additional information provided through the RFI process. Still, as was done with Frontier in 2010, MACC is recommending that Northwest Fiber commit to regular communications with MACC regarding the acquisition of programming contracts.

### **Conclusion**

After an expedited review process, staff has determined that Northwest Fiber has, or will have, sufficient legal, financial and technical qualifications to own and operate the cable system in the MACC area. Although there are risks involved, MACC has proposed conditions expected to satisfy and guarantee future performance.

Staff will continue to have discussions with Frontier and Northwest Fiber to determine its intentions and pursue commitments that provide expected community benefits to the member jurisdictions.

**Commission Action**

The Commission met October 1<sup>st</sup> with representatives of Frontier and Northwest Fiber in attendance to discuss the transfer and Northwest Fiber's qualifications. At that meeting, the company was given an opportunity to answer the Commissioners' questions and concerns, and to provide sufficient information to ensure Northwest Fiber met the qualifications to provide cable service. At the meeting, the Commission voted to recommend that the affected MACC jurisdictions approve the proposed transfer, with the conditions listed in the Resolution.

**What Action Does MACC Recommend?**

MACC recommends that each jurisdiction approve the proposed Transfer of Control of Frontier Communications to Northwest Fiber. MACC also recommends that each jurisdiction, as part of the transfer approval process, adopt the ten conditions of approval to ensure continued performance.

Enclosed Exhibits: A – MACC's Recommending Resolution and Exhibits