

RESOLUTION NO. 5477-19

A RESOLUTION CONSENTING TO THE TRANSFER OF CONTROL OF THE FRANCHISEE AND OF THE CABLE FRANCHISE GRANTED TO FRONTIER COMMUNICATIONS CORPORATION TO NW FIBER, LLC, WITH CONDITIONS.

WHEREAS, the Metropolitan Area Communications Commission (“MACC” or the “Commission,”) is an intergovernmental commission formed under ORS Chapter 190, with the membership of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin and West Linn;

WHEREAS, certain MACC jurisdictions granted cable television franchises to Verizon Northwest, Inc. (“Franchisee”), a subsidiary of Verizon Communications, Inc., in 2007 for a period of 15 years (“Franchises”);

WHEREAS, the jurisdictions that granted the Franchises to Verizon are Washington County and the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard and Tualatin (the “Affected Jurisdictions”);

WHEREAS, in 2009, the Affected Jurisdictions approved the transfer of the Franchises from Verizon to Frontier Communications Corporation as Frontier Communications Northwest, Inc., which then became the Franchisee;

WHEREAS, on July 19, 2019, MACC received a Federal Communications Commission Form 394 Application (“Application”) by which Frontier Communications Corporation, the corporate parent of Franchisee, and Northwest Fiber, LLC (“Northwest Fiber” or “Transferee”) requested approval from MACC and the Affected Jurisdictions of a proposed transfer of control of the Franchisee and its Franchises to Northwest Fiber;

WHEREAS, following the completion of the transactions constituting the transfer of control, Northwest Fiber would assume control of the local cable operations of the Franchisee, but must also secure certain other facilities and agreements to provide a comparable cable service currently provided by Franchisee;

WHEREAS, Federal law and Section 11 of the Franchises authorize MACC and its member jurisdictions to review any proposed transfer of control, including the proposed transaction as described in the Application and as clarified in answers to questions presented by MACC to the Franchisee and Northwest Fiber to determine the impact on the proposed Franchisee’s ability to perform the Franchise obligations based on the legal, financial, and technical qualifications of the Transferee;

WHEREAS, Section 11 of the Franchises also authorizes MACC and its member jurisdictions to condition approval of a transfer upon such terms and conditions as they deem reasonably appropriate within the legal, financial, and technical framework provided by the Franchises and Federal law;

WHEREAS, MACC has reviewed the materials provided by the Franchisee and Northwest Fiber in the Application and in response to requests for information originally provided to Northwest Fiber on August 6, 2019, and subsequently revisited and further investigated on numerous occasions through September 30, 2019;

WHEREAS, the review now being completed except for certain issues necessarily addressed in a prospective manner through conditions, the MACC Commission adopted Resolution No. 2019-02 recommending the Affected Jurisdictions approve the Application, provided those conditions and assurances are obtained from Frontier and Northwest Fiber;

WHEREAS, pursuant to Section 4(E) of the MACC Intergovernmental Agreement, final approval is granted only if all eleven Affected Jurisdictions approve the Application as recommended by MACC;

WHEREAS, MACC conducted a duly noticed public hearing concerning the proposed transfer on October 1, 2019; and

WHEREAS, the City of Tualatin deems it to be in furtherance of the public interest and the welfare of its citizens to consent to the transfer request, subject to appropriate conditions.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN OREGON that:

Section 1. Legal, Technical and Financial Qualifications of the Transferee.

MACC has found that the Franchisee and Transferee have the necessary legal, technical and financial qualifications to perform the required duties under the Franchise Agreement, provided certain conditions are imposed on the proposed transfer of control.

Section 2. Consent to the Transfer of Control. The City of Tualatin hereby consents to the transfer of control of the Franchisee and of the Franchises as set forth in the Federal Communications Commission Form 394, subject to the conditions set forth in Section 3, below.

Section 3. Conditions to the Transfer of Control. The approval of the proposed transfer of control shall not take effect until such time as each of the following conditions is met:

1. All eleven MACC Affected Jurisdictions approve the transfer of control.
2. The Frontier Communications Corporation/Northwest Fiber, LLC transaction ("Transaction") must close with all material terms substantially consistent with the Transition Services Agreement submitted as Exhibit B to the MACC Request for Information of August 6, 2019, as well as the information provided to MACC or the Mount Hood Cable Regulatory Commission ("MHCRC") in public documents and responses to Requests for Information submitted by MACC and the MHCRC by May 28, 2020. If the Transaction does not close as described in this paragraph, then the Affected Jurisdictions' consent to the transfer shall be void and of no force or effect, and the transfer request deemed to be have been timely denied,

unless otherwise agreed by Northwest Fiber and the Affected Jurisdictions. Frontier, Northwest Fiber and the Franchisee hereby waive any and all claims that they may have that any denial of the transfer request that results from failure of the conditions in this paragraph fails to satisfy the deadlines established by applicable law including, without limitation, claims based on, arising out of, or relating to 47 U.S. C. section 537, as amended, and agree that they shall be deemed to have agreed to an extension of the time to act on the transfer request as required to make any denial effective.

3. The Transaction is approved by any required federal or state agency and any local government requiring approval.

4. In all respects and without exception, Northwest Fiber and Franchisee agree and acknowledge that the transfer of control will not affect, diminish, impair or supersede the binding nature of the existing valid ordinances, settlement agreements, side letters, regulatory actions, franchises, resolutions, and agreements applicable to operation of the cable system (including but not limited to payment of franchise fees and other amounts due under the Franchise, non-compliance issues and indemnification as provided in the Franchise) whether prior to or subsequent to the date of the control of the Franchise and Franchisee were transferred to Northwest Fiber. Northwest Fiber shall at all times cause Franchisee to comply, and Franchisee shall comply, with all of the above.

5. In lieu of the current obligations of the Franchise Section 13.6, "Letter of Credit," Franchisee, under the control of Transferee, provides and maintains an irrevocable letter of credit or performance bond in a form acceptable to MACC in the amount of \$250,000 to secure the faithful performance by Franchisee of all material provisions of the Franchises through the end of the current Franchise term. In addition, Northwest Fiber will execute a guarantee of Franchise performance in substantially the form attached as Exhibit B within ten (10) days of the close of the Transaction.

6. Frontier has paid MACC all reimbursement costs due as a result of review of the transfer of control application, consistent with the separate agreements concerning those costs, up to \$15,000, which may be offset against future Franchise fees by Franchisee.

7. Transferee provides current contact information for notice recipients under Section 16.5 of the Franchise.

8. MACC and its Affected Jurisdictions' consent to the transfer of control shall not be construed to constitute a waiver or release of any rights they may have under the Franchise and any separate written agreements with the Franchisee and Franchisee's lawful successors.

9. No later than November 1, 2019, Transferee will provide MACC with a progress report of its acquisition of linear broadcast content, including a listing of national and local content providers with which: (1) Transferee has signed agreements; (2) Transferee has pending agreements being negotiated; and (3) Transferee is pursuing agreements. Transferee will use commercially reasonable efforts to enter into such agreements with linear broadcast vendors representing at least 75% of the linear broadcast channels provided by Frontier on its channel lineup labeled as Prime HD as of the closing of the transaction.

10. Transferee acknowledges these conditions of approval of the transfer of control in writing no later than November 1, 2019.

Section 4. Authorization to Execute and File Resolution. The City Manager is authorized to file a copy of this Resolution with MACC.

Section 5. Effective Date. This Resolution is effective upon adoption.

INTRODUCED AND ADOPTED by the City Council this ___ day of November, 2019.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder