



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 27, 2018

Department: Public Works

Agenda Planning Date: June 21, 2018

Time required: 5 min.

☐ Audio/Visual aids

Contact: Alan Haley

Phone: (503) 588-7943

Department Head Signature:

TITLE

Consider a resolution waiving certain provisions of Marion County Code chapter 5.10 applicable to the franchise between the county and Comcast of Oregon I, Inc.

Issue, Description & Background

County and city staff have held a number of meetings with Comcast representatives in the past several years finalizing the negotiations for a new cable franchise, which is for ten years. As a result of the negotiation, certain provisions of Marion County Code chapter 5.10 are in conflict with the terms of the new franchise. However, other franchises are still bound by the current Marion County Code chapter 5.10 as written and therefore the existing code needs to be maintained. Marion County Code section 5.10.930 authorizes the board to waive specific provisions of Marion County Code chapter 5.10 by resolution. This resolution serves to waive certain provisions of Marion County Code chapter 5.10 applicable only to the franchise between the county and Comcast of Oregon I, Inc.

Financial Impacts:

None.

Impacts to Department & External Agencies

The Marion County Code chapter 5.10 will remain as written and is applicable to the other cable franchises in the county. This resolution has no affect on those franchises.

Options for Consideration:

1. Approve the resolution and Exhibit A that goes along with the new franchise for Comcast of Oregon I, Inc.
2. Do not approve the resolution.

Recommendation:

Staff recommends the Marion County Board of Commissioners approve the resolution waiving certain provisions of Marion County Code chapter 5.10 applicable to the franchise between the county and Comcast of Oregon I, Inc.

List of attachments:

Resolution and Exhibit A

Presenter:

Alan Haley, Scott Norris

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Jolene Bray - jbray@co.marion.or.us, Tim Beaver - tbeaver@co.marion.or.us

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of waiving certain provisions of)
Marion County Code chapter 5.10 applicable)
to the franchise between the county and)
Comcast of Oregon I, Inc.)

RESOLUTION No.

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, June 27, 2018.

WHEREAS, the county has negotiated the renewal of a cable television franchise agreement with Comcast of Oregon I, Inc.; and

WHEREAS, certain provisions of the new cable television franchise agreement conflict with the terms of chapter 5.10 of the Marion County Code; and

WHEREAS, section 5.10.930 of the Marion County Code allow the Marion County Board of Commissioners to waive provisions of chapter 5.10 of the Marion County Code in its sole discretion by resolution; now, therefore,

IT IS HEREBY RESOLVED that the board waives the provisions of Marion County Code chapter 5.10 as set forth in exhibit A to this resolution as they relate to the cable television franchise agreement between the county and Comcast of Oregon I, Inc. This waiver is only applicable to the cable television franchise agreement between the county and Comcast of

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Oregon I, Inc., and only for the term of the cable television franchise agreement set forth in section 2.3 of the agreement.

DATED at Salem, Oregon, this 27th day of June 2018.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

EXHIBIT A

The following provisions of Marion County Code chapter 5.10 are waived as they relate to the cable television franchise agreement between the county and Comcast of Oregon I, Inc. for the term of the cable television franchise agreement as set forth in section 2.3 of the agreement. Waivers of entire sections are listed by section number; waivers of portions of sections or subsections are indicated by strikethrough:

1. Section 5.10.030: Gross Receipts

2. Section 5.10.030: Definition of "School"

"School" means any accredited, ~~nonprofit~~, academic educational institution including primary and secondary schools, colleges and universities, both public and private.

3. Section 5.10.130(B):

B. The requirements of subsection (A) of this section shall apply to any change in control of grantee. The word "control" as used herein is not limited to major stockholders or partnership interest, but includes actual working control in whatever manner exercised. ~~In the event that grantee is a corporation, prior authorization of the board of commissioners shall be required where ownership or control of more than 10 percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the grantee as of the effective date of the franchise, singularly or collectively.~~

4. Section 5.10.140:

Franchise renewal shall be as prescribed by applicable law. Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. ~~Upon mutual execution of a franchise renewal agreement, grantee shall reimburse grantor for special nonrecurring out-of-pocket costs incidental to the franchise renewal award including but not limited to attorney and consultant costs and publishing costs, not to exceed any maximum specified in the agreement. Any such reimbursement shall not be charged against any franchise fee due to the grantor during the term of the franchise.~~

5. Section 5.10.160(A):

A. Annual Franchise Payment. A grantee of a franchise hereunder shall pay to the grantor an annual fee in an amount as designated in the franchise agreement. Such payment shall be in addition to any other prescribed fees, including, but not limited to, business license and permit fees, and commence as of the effective date of the franchise. The grantor, upon request, shall be furnished a statement, either audited and certified by an independent certified public accountant or certified by a financial officer of the grantee, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. ~~Grantor shall have the right to conduct an independent audit of grantee's records, and if such audit indicates a franchise fee underpayment of two percent or more, the grantee shall assume all reasonable costs of such an audit.~~

6. Section 5.10.170(B): Procedure prior to revocation (of the Franchise)

7. Section 5.10.210:

For either a new franchise award or a franchise renewal, costs to be borne by grantee shall include, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to a franchise, development and publication of relevant ordinances and franchise agreement, fees, and any reasonable cost not covered by the application fees, incurred by the grantor in its study, preparation of proposal solicitation documents and evaluation of applications, including, but not limited to, consultant and attorney fees and grantor staff time.

These franchise processing costs shall be independent of the construction inspection and permit fees specified in MCC 5.10.470(A)(1) and the franchise fee specified in MCC 5.10.160.

8. Section 5.10.290: Annual review of quality services

9. Section 5.10.300(A), (B), and (C): System and services review (on or about year 3)

10. Section 5.10.340(A)(1): Indemnification

11. Section 5.10.420: Provision of service

12. Section 5.10.470(A)(3), (A)(4), and (A)(5):

~~3. Compliance with Pole Attachment Standards. All aerial construction shall comply with the practices included in the Bell System Code of Pole Line Construction.~~

4. Compliance with Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code (National Bureau of Fire Underwriters) and the National Electrical Safety Code (National Bureau of Standards), as amended, and all applicable state and local codes.

~~5. Antennas and Towers. Antenna supporting structures (towers) shall be designed for the proper loading as specified in the Electronics Industry Association's R.S.222-A specifications.~~

13. Section 5.10.730(A):

A. Cure the violation and recover the actual cost thereof from the security fund established herein if such violation is not cured within 30 days after written notice to the grantee of grantor's intention to cure and draw upon the security fund; and assess against the grantee monetary damages up to the limits established in the franchise agreement for material franchise violations, said assessment to be levied against the security fund, hereinabove provided, and collected by grantor immediately upon said assessment. The amount of such assessment shall be deemed, without proof, to represent liquidation of damages actually sustained by grantor by reason of grantee's failure to perform. Such assessment shall not constitute a waiver by the grantor of any other right or remedy it may have under the franchise or under applicable law, including, without limitation, its right to recover from grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by grantor by reason of

~~or arising out of such breach of the franchise.~~ This provision for assessment of damages is intended by the parties to be separate and apart from grantor's right to enforce the provisions of the construction and performance bonds provided for in MCC 5.10.310 through 5.10.350 and is intended to provide compensation to grantor for actual damages.

14. Section 5.10.750(C) and (D): Correction of violations
15. Section 5.10.880: Separability – Nonmaterial provisions
16. Section 5.10.890: Separability – Material provisions