

# METROPOLITAN AREA COMMUNICATIONS COMMISSION

## BOC MEETING MINUTES

**Tuesday, October 1st, 2019**

### **1. CALL TO ORDER – ROLL CALL**

Arne **Nyberg**, MACC Chair, called the meeting to order at 1:45 pm and asked for roll call.

**In Attendance:** Dave **Waffle**, Beaverton; Rob **Drake**, Cornelius; Larry **Hatch**, Forest Grove; Wenonah **Blanchette**, Gaston; Peter **Brandom**, Hillsboro; Kent **Studebaker**, Lake Oswego; Russ **Sheldon**, North Plains; Arne **Nyberg**, Rivergrove; Liz **Newton**, Tigard; Maria **Reyes**, Tualatin; Robert **Davis**, Washington County

**MACC Staff:** Thaddeus **Girard**, Administrator; Darryl **Willis**, Finance Manager; Kristen **Gearhart**, HR/Accounting assistant; Kristiyn **Reimers**, Administrative assistant.

**Legal Counsel for MACC:** Ashley **Driscoll**

**Frontier Representative:** Jessica **Epley** and George **Thompson**. **Legal Counsel for NW Fiber:** Byron **Springer**

### **2. INTRODUCTIONS and COMMISSIONER ANNOUNCEMENTS**

Jessica Epley and George Thompson of Frontier Communications were introduced, as well as Byron Springer, Legal counsel for NW Fiber LLC. There were no additional announcements or disclosures.

### **3. PUBLIC COMMENT PERIOD – No Public Comments**

### **4. ADDITIONS/DELETIONS TO AGENDA**

A revised resolution was passed out at the start of the meeting which replaced the version that was in the original meeting packet.

### **5. CONSENT AGENDA**

#### **A. Consider Approving Minutes of December 07, 2018**

**Nyberg** motioned for a vote to accept the Consent Agenda item A - Previous Minutes. **Unanimous** vote in favor. **Motion Passed**

### **6. AGENDA ITEM – Frontier Communications Request to Transfer Ownership of Cable Franchise to NW Fiber, LLC**

**Nyberg** opened a public hearing to allow testimony regarding the proposed transfer of the Frontier Communications Cable Television Franchise Agreement to NW Fiber, LLC.

#### **A. Public Comments - No members of the public were present. Public comments closed.**

#### **B. Staff Report**

**Girard** presented the MACC staff report. Clarification were made on several points within the report to start. On the record, NW Fiber did respond to MACC RFI in a timely manner. While not currently registered with the Oregon Secretary of State, NW Fiber, LLC will be doing business as the Franchisee, Frontier Communications (which is registered to do business in Oregon) until such time that they are independently registered. This transfer of ownership also needs to be approved by the Oregon Public Utility Commission. There was a pre-hearing conference call for this on Sept. 18, 2019, followed by a first and second settlement conference several weeks apart from that. The process is on track for transaction close during the first quarter of 2020.

MACC performed the usual technical, financial and legal reviews of the transfer. After expedited review, Staff has determined that NW Fiber has/will have the sufficient legal, financial and technical qualifications to own and operate the cable system in the MACC area.

While there may be some risks involved with the transfer, MACC has proposed conditions that are expected to satisfy and guarantee future performance. Staff shared that its greatest concern is that NW Fiber may not be in the franchised cable business for very long based on information they provided to MACC, but that is not subject to review at this time. Staff will continue to determine the intentions of NW Fiber to provide the expected community benefits to the jurisdiction members.

### **C. Frontier & NW Fiber Comments**

**Byron Springer** gave a history and background on NW Fiber, and discussed the goals for the future of the company and its infrastructure.

### **D. Commissioner Questions and Comments**

**Drake** stated that the comment in the staff report about NW Fiber not being in the cable business beyond the next 5 years was a bit ominous and asked for clarification from the Franchisee. There was also a question put to NW Fiber on whether they will seek extension of Franchise in good faith. **Springer** of NW Fiber responded that it is their intention to be in business for as long as the customers are still wanting the services they offer. They are committed to provide all of the services they offer at close, including cable. It was also stated that when the time comes for a new Franchise to be negotiated, they will sit down for those negotiations.

**Hatch** also inquired about the video side of things and wanted to know if NW Fiber have given any thought to how they would gracefully exit the video market. **Springer** responded that they have no intention of exiting the video market at this point so that conversation has not happened. The plan for now is to continue offering video service. It is a consumer driven service however, and if consumers continue to move away from the cable TV market, they will have to make their plans when it is appropriate.

**Waffle** inquired about whether or not we should be concerned about the investment in existing physical plant and service capabilities for the cable consumers. **Springer** responded that they are heavily incentivized to provide a good physical plant, and customer service is a key part of that. They are working to be the best they can be with regard to customer service and transparency.

**Davis** asked whether the \$250,000 bond in the resolution for all material provisions of the franchise would include customer service. Customer service issues are probably one of the top things the elected officials of Washington County hear about most. **Driscoll** responded that the bond could be accessed for all material provisions through the Franchise. If there is some reason that NW Fiber is falling behind in their customer service requirements as required by Franchise, there would be access to that bond. However, the access is limited to what is spelled out by the Franchise.

**Reyes** asked how the various factors of the transfer would affect those members of the community who are not tech savvy, or who might have language barriers, and how the message will be communicated to them. **Springer** responded that there will be every effort made to make sure that people understand clearly what is happening during the transition from Frontier to NW Fiber. There will be new branding that the customers will see, but beyond that the transition which should be as seamless as possible for all the customers.

**Brandom** inquired about equipment or asset investments that are planned. **Springer** responded that they are talking about that with the PUCs, but the plan is that over a 5-year period they will be putting everything that they can back in to the business in the form of developing better redundancies, upgrading technology, and having fiber upgraded.

**Brandom** asked how NW Fiber can consider themselves to be in a better financial position than Frontier. **Springer** commented that while he cannot go into great detail on this question, he can say that Frontier is far more heavily leveraged than NW Fiber, and NW Fiber has a much smaller footprint to manage.

**Newton** inquired about the process date and when everything needs to be out to the cities. **Driscoll** responded with the window of time that MACC is working within to meet requirements. She also expanded a bit more into the provisions that we have requested be in place for this transfer for the term of this Franchise.

**Hatch** shared that based on his previous experiences with Franchise transfers, it's basically a gamble either way, but with what he has seen so far, he is not overly concerned with the transfer and sees no reason to voice any concern to his city council. **Nyberg** Agreed.

**Drake** and **Davis** both inquired as to what happens if there is not a unanimous vote in favor? **Driscoll** responded that the IGA states that all affected jurisdictions have to approve it in order for it to go into effect. If unanimous consent is not met then the transfer is not approved. This could trigger a back to the drawing board type situation. **Springer** replied that so far in other jurisdictions they have not run into any serious issues with regard to getting the votes in favor that they need for passing. In a few instances there were issues that needed to be addressed, but ultimately it has been a fairly smooth process. Worst case scenario, if there is not a vote in favor of passing, Frontier would most likely end up filing for bankruptcy.

**Brandom** asked Staff if Frontier has been meeting their customer service goals per Franchise. **Girard** responded that they are.

**Newton** spoke to the need for clarity and context when this moves to the cities.

**Waffle** inquired about the process for getting this out to the cities if it meets board approval. **Girard** replied that it is planned to get the information out to all of the affected cities to have it included in the agenda for one of their upcoming City Council meetings, and for himself and a representative of Frontier to attend said meetings should there be questions. This will happen as quickly as possible to meet the requirements of the transfer.

**Brandom** inquired about the timing from a consumer stand point of when they would start to see the transition from Frontier. **Springer** replied in the first half of 2020.

**Davis** commented that this transfer will really need to be presented as positively as possible or the County may hesitate.

**Newton** commented that with regard to her Council she feels concerned that there will probably be a lot of questions that she will not be able to answer. **Jessica Epley** responded that she, or another representative from Frontier will be in attendance at all of the meetings to be a resource to allay concerns and to answer questions that the council members might have.

**Newton** asked if the transaction should fail to go through, and Frontier then files for bankruptcy, what would that mean to the MACC jurisdiction subscribers? **Girard** responded that it would mean fewer options being available to the subscribers, and would result in its own problems that MACC is trying to prevent. There are a lot of unknowns with that scenario. **Driscoll** responded that we are allowed to not approve on responsible grounds, but there would most likely be some form of litigation that would follow to determine if we acted reasonably.

**Hatch** is looking forward to any improvements that would come from this transfer. He acknowledges that the future of cable is vague, but for the time being to have improvements would be most welcome.

**E. Direction to Staff or Consider Staff Recommendation**

If the resolution is approved to proceed, MACC staff are to send a copy of the Staff Report and a template of the resolution out to all the affected Jurisdictions for inclusion in their meeting agendas for up coming City Council meetings for approval.

**7. ADMINISTRATIVE ACTION - BOARD ACTION REQUESTED**

- A. Agenda Statement: Consider Resolution #2019-02, Recommending to the Affected Jurisdictions that they Consent to the Transfer of Ownership of the Frontier Communications Corporation Franchise to NW Fiber, LLC**

**Hatch** motions to approve resolution #2019-02. **Studebaker** seconded the motion.

**Nyberg** asks for a show of hands.

**Waffle, Hatch, Blanchette, Brandom, Studebaker, Sheldon, Nyberg, Newton, Reyes,** and **Davis** vote in Favor.

**Drake** votes against. **Motion passes. Resolution #2019-02 approved** with a 10-1 majority.

**8. OTHER BUSINESS - None**

**9. ADJOURNMENT - Meeting was adjourned at 2:50 pm**