

RESOLUTION NO. 2019-52

RESOLUTION OF THE CITY OF FOREST GROVE, OREGON

**CONSENTING TO THE TRANSFER OF CONTROL OF THE FRANCHISEE AND
OF THE CABLE FRANCHISE GRANTED TO FRONTIER COMMUNICATIONS
CORPORATION TO NORTHWEST 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; and

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”); and

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”); and

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; and

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; and

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 to that currently provided by Franchisee; and

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; and

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; and

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; and

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, which Resolution is attached here as Exhibit A; and

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

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

WHEREAS, the City of Forest Grove 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 OF FOREST GROVE AS FOLLOWS:

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 Forest Grove, Oregon, 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. That the City of Forest Grove City Council hereby authorizes the City Manager to execute and file a copy of this Resolution with MACC.

Section 5. Effective Date. This resolution is effective immediately upon its enactment by the City of Forest Grove City Council.

PRESENTED AND PASSED this 14th day of October, 2019.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 14th day of October, 2019.



Peter B. Truax, Mayor

MACC STAFF REPORT

**VERIZON NW INC. TRANSFER OF CONTROL
TO
FRONTIER COMMUNICATIONS CORPORATION**

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 1st meeting, the Board of Commissioners (Commission) of the Metropolitan Area Communications Commission (MACC) unanimously 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 29th 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 1st 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 ten yes and one no 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

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION 2019-02

A RESOLUTION RECOMMENDING APPROVAL BY THE AFFECTED MACC MEMBER JURISDICTIONS OF THE TRANSFER OF CONTROL OF THE FRANCHISEE AND OF THE CABLE FRANCHISES GRANTED TO VERIZON NORTHWEST, INC. IN 2007, AND TRANSFERRED TO FRONTIER COMMUNICATIONS CORPORATION IN 2009, NOW TO NORTHWEST FIBER, LLC, WITH CONDITIONS

WHEREAS, the Metropolitan Area Communications Commission, hereinafter "MACC," 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; and

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; and

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"); and

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; and

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; and

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 to that currently provided by Franchisee; and

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; and

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 Franchise and federal law; and

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

WHEREAS, the review now being completed except for certain issues necessarily addressed in a prospective manner through conditions, MACC has determined that it should recommend approval of the Application, provided those conditions and assurances are obtained from the companies; and

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

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

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION:

Section 1. Commission Action on Form 394 Application. The Commission hereby approves the Application for Transfer of Control, as submitted on July 19, 2019, subject to the conditions contained in Section 3 below.

Section 2. Recommendation to Member Jurisdictions. The Commission hereby recommends that each of the Affected Jurisdictions approve the Application for Transfer of Control by duly authorized enactment of each jurisdiction's governing body, subject to the conditions set forth in Section 3, below.

Section 3. Conditions to the Transfer of Control. The approval recommended herein 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 and 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 Jurisdiction. 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 X 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.

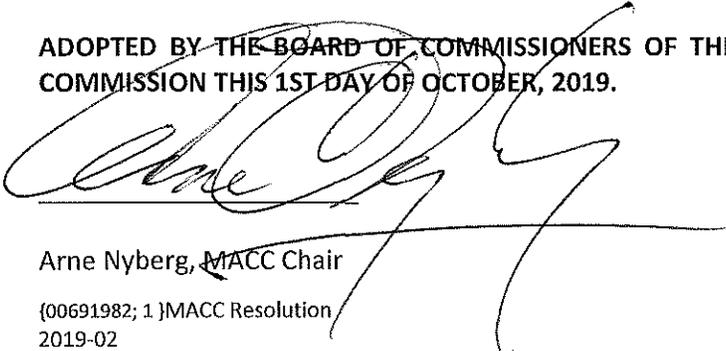
8. MACC and its Affected Jurisdictions' consent to the transfer of control shall not be construed to constitute a waiver or release of any rights they may have under the Franchise and any separate written agreements with the Franchisee and Franchisee's lawful successors.

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. Effective Date. This Resolution shall be effective upon its adoption by the Commission and signature by the MACC Chair.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THIS 1ST DAY OF OCTOBER, 2019.


Arne Nyberg, MACC Chair

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2019-02

Northwest Fiber/Frontier Transfer of Control

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Exhibit B

GUARANTEE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2019, between the Jurisdictions, the Guarantor, and the Grantee. For the purpose of this Agreement, the terms "Jurisdictions", "Guarantor" and "Franchisee" have the meanings given in this Agreement below:

WITNESSETH

WHEREAS, the [list cities], Oregon, (the "Jurisdictions") have negotiated a cable franchise agreement (the "Franchise") currently held by Frontier Communications Northwest Inc. (the "Franchisee"), to operate and maintain a cable television system (the "Cable System"); and

WHEREAS, Northwest Fiber, LLC (the "Guarantor") has proposed to become an ultimate owner and manager of the Franchisee, and has filed a formal written request seeking approval of the proposed transfer by the Jurisdictions as required by federal law (FCC Form 394); and

WHEREAS, the Jurisdictions have submitted Requests for Information in performance of their review of the Franchisee's legal, financial and technical qualifications to perform its obligations under the Franchise following the proposed transfer, and the Guarantor and the Franchisee have responded to the Jurisdictions' Requests by providing additional information; and

WHEREAS, in response to requests by the Jurisdictions following their review, the Guarantor has agreed to provide this guarantee in order to induce the Jurisdictions to approve the transfer of control of the Franchise and the Franchisee from Frontier Communications Corporation to Northwest Fiber, LLC;

NOW, THEREFORE, in consideration of the foregoing, the Guarantor agrees:

1. The Guarantor hereby unconditionally guarantees the timely and full performance of any and all obligations of Franchisee contained in the Franchise. In the event Franchisee for any reason fails to perform those obligations, the Guarantor agrees to perform or cause to be performed those obligations on Franchisee's behalf promptly upon written demand by the Jurisdictions.
2. This guarantee is an absolute, continuing, and unlimited performance guarantee of the Franchise by the Franchisee. The Jurisdictions shall not be obliged to proceed first against the Franchisee or any other person, firm or corporation.
3. The Guarantor waives notice of acceptance of this guarantee and further waives protest, presentment, demand for performance or notice of default to the Guarantor. The Jurisdictions have no duty to advise the Guarantor of any information known to them regarding Franchisee's

performance of its Franchise obligations. This waiver, however, shall not be deemed a waiver of any requirement of the Franchise as to notice to the Grantee.

4. The Jurisdictions' failure to require strict performance of the Franchise shall not release the Guarantor from liability under this Agreement.

5. This Agreement, unless terminated, substituted or canceled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise. This Agreement and the guarantee made hereunder are contingent upon and subject to the closing of the transaction by which ultimate control of the Franchisee is transferred to the Guarantor. If control of the Franchisee is subsequently transferred away from the Guarantor with the approval of the Jurisdictions, the guarantee shall terminate at that time.

6. The Guarantor may propose substitution of another Guarantor to perform the obligations of this Agreement. If the Jurisdictions find the proposed substitute Guarantor reasonably satisfactory, another Guarantee Agreement may be substituted upon mutual agreement of the Jurisdictions and the Guarantor. Such substitution shall not affect liability incurred or accrued under this agreement prior to the effective date of such substitution. Following the Jurisdictions' acceptance of the substitute Guarantor, no claim, suit or action under this Agreement by reason of any default of the Franchisee shall be brought against the original Guarantor unless asserted or commenced within one year after the effective date of such substitution of the Agreement, and only to the extent it relates to a liability incurred or accrued prior to the effective date of the substitution.

7. Any notices given pursuant to this agreement shall be in writing and delivered personally to the following addresses or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Guarantor and the Franchisee at:

_____, and to the Jurisdictions at: _____. Either party may change its address for notices by giving notice of the new address in the manner provided in this paragraph.

8. Definitions: For purposes of this Agreement, the following terms are defined as indicated below:

(A) Franchisee: Frontier Communications Northwest Inc., or its lawful successors;

(B) Guarantor: Northwest Fiber, LLC;

(C) Franchise: Cable Franchise Agreement granted by the Jurisdictions to Franchisee, including all documentation of any conditions of grant, renewal, extension, settlement or transfer.

[Signatures on following page]

IN WITNESS WHEREOF, the Grantee, the Jurisdictions, and Guarantor have entered into this Agreement on the day of _____, 2019.

Guarantor: Northwest Fiber, LLC

By: _____
Title: _____

State of _____)
County of _____)

This Agreement was acknowledged before me on the day of _____, 2019, by _____, as a duly authorized officer of Northwest Fiber, LLC.

Notary Public for: _____
My Commission Expires: _____

Grantee: Frontier Communications Northwest Inc. or its successors

By: _____
Title: _____

State of _____)
County of _____)

This Agreement was acknowledged before me on the day of _____, 2019, by _____, as a duly authorized officer of Frontier Northwest Inc. or its successors.

Notary Public for: _____
My Commission Expires: _____

Jurisdictions: Cities of Lake Oswego, Tualatin, Tigard, Rivergrove, Beaverton, King City, Cornelius, Hillsboro, Forest Grove and Durham and Washington County

By: _____
Title: _____

State of _____)
County of _____)

This Agreement was acknowledged before me on the day of _____, 2019, by _____, as a duly authorized representative of _____.

Notary Public for: _____
My Commission Expires: _____

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**[Jurisdiction], OREGON
RESOLUTION No. _____**

**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; and

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”); and

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”); and

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; and

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; and

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 to that currently provided by Franchisee; and

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; and

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; and

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; and

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, which Resolution is attached here as Exhibit A; and

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

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

WHEREAS, the [City Council/Board of County Commissioners] 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/BOARD OF COMMISSIONERS]:

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 [governing body] 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 Mayor and his designee(s) are authorized to execute and file a copy of this Resolution with MACC.

Section 5. Effective Date. This Resolution shall be effective upon its adoption by the Council and approval by the Mayor.

Introduced and adopted this ___ day of ____ 2019.

ATTEST:

City Recorder

Mayor



A place where families and businesses thrive.

CITY RECORDER USE ONLY:

AGENDA ITEM #:	<u>Item 7.</u>
MEETING DATE:	<u>10/14/2019</u>
FINAL ACTION:	<u>RESO 2019-52</u>

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

PROJECT TEAM: *Paul Downey, Director, Administrative Service*

MEETING DATE: *October 14, 2019*

SUBJECT TITLE: *Report on a Resolution Consenting to the Transfer of Control of Franchisee and of the Cable Franchise Granted to Verizon Northwest, Inc. in 2007, and Transferred to Frontier Communications Corporation in 2009, and now to Northwest Fiber LLC, with Conditions*

ACTION REQUESTED:	Ordinance	Order	X	Resolution	Motion	Informational
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X all that apply

ISSUE STATEMENT:

Frontier Communications has requested transfer of control of the franchisee and the franchise to Northwest Fiber LLC for local television cable services currently provided by Frontier. The Metropolitan Area Communications Commission (MACC), which manages the television cable franchises for the City, has reviewed the proposed transfer and is recommending that the City approve the proposed transfer. The City Attorney's Office has prepared a resolution approving the transfer for Council's consideration.

DISCUSSION:

City staff is relying on MACC's review of the proposed transfer since MACC manages the telecommunications franchises for the City. Also, the City Attorney is also the attorney for MACC and has deeply involved in the review process. MACC Administrator Thaddeus Girard will present the staff report from MACC. A representative from Frontier is also planning on attending the Council meeting.

MACC's staff report and the resolution passed by the MACC Board recommending that the member agencies approve the transfer is attached to this report. The MACC staff report provides more detailed information about the transfer.

The transfer to Northwest Fiber must be approved by all of the affected jurisdictions in order for it to become effective. If any one of the affected jurisdictions votes no, it vetoes the transfer for the other.

FISCAL IMPACT:

Staff is not expecting any fiscal impact from the transfer as Northwest Fiber would still be required to pay the franchise fees.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached resolution.

ATTACHMENT(s):

City Resolution

MACC Staff Report, MACC Resolution No. 2019-02 and Model Resolution