



Legislation Text

File #: 15-0122, **Version:** 1

Resolution to Consent to Assignment and Change of Control from Comcast Corporation to Midwest Cable, Inc.

Comcast Cablevision of the South, Inc., was granted a franchise by the City Council in October of 2002, and entered into a franchise agreement to operate and maintain a cable television system within the City of Ann Arbor, to provide certain services to the City of Ann Arbor, and to make payments of franchise and fees as support for Public, Educational and Governmental access channels ("PEG fees") (the "Franchise Agreement"). The franchise and Franchise Agreement extend to October of 2017. As a result of some reorganizations and name changes, Comcast Cablevision of the South, Inc., became Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC ("Franchisee"). Comcast Corporation ("Comcast") is the ultimate parent company of Franchisee.

Budget/Fiscal Impact

Under the terms of the proposed transfer, no change in revenues or expenditures under the existing franchise is expected.

As part of a pending acquisition of Time/Warner Cable by Comcast, a new, independent entity, Midwest Cable, Inc. ("Midwest Cable"), has been formed to take over cable franchises from and provide services to customers of subsidiaries and affiliates of Comcast and of Charter Communications, Inc. As part of that restructuring, Franchisee will become Comcast of Michigan IV, LLC ("New Franchisee") and become a wholly-owned subsidiary of Midwest Cable. Review and approval of this transaction is pending before the United States Justice Department ("USDOJ") and the Federal Communications Commission ("FCC"). Following approval of the transaction by the USDOJ and the FCC, Midwest Cable will do business under the name GreatLand Connections.

Representatives of Comcast have represented that Midwest Cable and the New Franchisee will assume all of the lawful franchise obligations, duties and responsibilities specified in the City's Franchise Agreement and cable ordinance.

Although Comcast takes the position that certain provisions of the City's cable ordinance and Franchise Agreement are pre-empted by the Michigan Uniform Video Services Local Franchise Act (PA 480 of 2006), as required by the City's cable ordinance and in accordance with the federal Cable Communications Policy Act (47 USC 521, *et seq.*), Comcast filed an FCC Form 394 with the City requesting that the City approve the transfer of control from Comcast to Midwest Cable. A copy of the FCC Form 394 and June 17, 2014, cover letter are attached.

Comcast subsequently responded to requests for information from a number of municipalities including the City of Ann Arbor. A copy of Comcast's September 30, 2014, response to those requests is attached.

The deadline for the City to act on the FCC Form 394 was extended a couple of times and is now

February 13, 2015. Therefore, the February 2, 2015, City Council meeting is the last opportunity for City Council to act.

At a special; meeting on January 20, 2015, at which Comcast's FCC Form 394 application was discussed, the City's Cable Communication Commission chose not to adopt a formal resolution. Instead, the minutes of the Commission meeting reflect a recommendation that City Council accept Comcast Corporation's FCC Form 394 application. (A copy of the minutes of the January 20, 2015, special meeting of the Cable Communication Commission is attached.) Although no action may be necessary from City Council in order for the City's Franchise Agreement to transfer to Midwest Cable, the City's cable ordinance requires City approval of a transfer, but further provides that approval will not be unduly withheld. Approval of this resolution will help protect the City's rights under City Code, the existing Franchise Agreement with Franchisee, and federal law, which may not be preserved as well if no action is taken.

Staff recommends Council adopt this resolution approving the transfer of the franchise from Comcast to Midwest Cable.

Prepared by: Lisa Wondrash, Communications Unit Manager

Reviewed by: Tom Crawford, Chief Financial Officer

Approved by: Steven D. Powers, City Administrator

Sponsored by: Councilmember Kunselman

Whereas, Comcast Cablevision of the South, Inc., now Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC ("Franchisee"), was awarded a franchise by the City Council in October of 2002, and entered into a franchise agreement to operate and maintain a cable television system within the City of Ann Arbor, to provide certain services to the City of Ann Arbor, and to make payments of franchise and fees as support for Public, Educational and Governmental access channels (PEG fees), which franchise extends to October of 2017 ("Franchise Agreement");

Whereas, Comcast Corporation ("Comcast") is the ultimate parent company of Franchisee;

Whereas, on April 25, 2014, Comcast and Charter Communications, Inc. ("Charter"), entered into the Comcast/Charter Transactions Agreement, pursuant to which the Franchisee, through a restructuring under Comcast's ownership, will become Comcast of Michigan IV, LLC ("New Franchisee") and immediately thereafter will become a wholly-owned subsidiary of Midwest Cable, Inc. ("Midwest Cable") (the "Transaction");

Whereas, Approval of the Transaction is pending before the United States Justice Department ("USDOJ") and the Federal Communications Commission ("FCC");

Whereas, Following approval of the Transaction by the USDOJ and the FCC, Midwest Cable will do business under the name GreatLand Connections;

Whereas, Comcast filed an FCC Form 394 with the City requesting that the City approve the transfer of control from Comcast to Midwest Cable;

Whereas, Section 2:124 of Chapter 32 of the Ann Arbor City Code provides that a franchisee that transfers or assigns its franchise must apply to the City for approval, allows for conditions under which approval may be granted, and provides that such approval shall not be unduly withheld; and

Whereas, The City's Cable Commission meeting minutes from January 20, 2015, reflect a recommendation that City Council accept Comcast's FCC Form 394 application but take no action on the request, premised on the representations that Midwest Cable, d/b/a GreatLand Connections will abide by the lawful terms and conditions of the current Franchise Agreement and that no action is required for the transfer to take effect;

RESOLVED, That the City of Ann Arbor consents to the transfer of control from Comcast to Midwest Cable, based on and relying on the representations made that Midwest Cable will comply with the lawful terms of the existing franchise, relying on the following representations:

- (a) Midwest Cable and New Franchisee will comply with the lawful terms of the existing franchise through 2017 under the Franchise Agreement and the City's cable ordinance (Chapter 32 of the Ann Arbor City Code);
- (b) Comcast and Midwest Cable will commit to adequate financial support to make the transition successful; and
- (c) Midwest Cable and New Franchisee do not now have plans to change CTN's current PEG channel locations (channels 16,17,18, and 19);

RESOLVED, That this resolution is not intended to be and shall not be construed to be an amendment of either the Franchise Agreement or the City's cable ordinance;

RESOLVED, That this resolution is not intended to be and shall not be construed to be a voluntary franchise agreement under MCL 484.3313 (Section 13 of PA 480 of 2006); and

RESOLVED, That the City reserves its rights, and no approvals, implied approvals, or signatures on behalf of the City shall be deemed a waiver or limitation of that reservation of rights under the City's police powers, under the federal Cable Communications Policy Act, 47 USC 521, *et seq.*, under the Michigan and United States Constitutions, and under any other statute or court decision that may impact the City's rights relative to the franchise, the City's cable ordinance, and the Franchise Agreement.

Sponsored by Councilmember Kunselman