



Memorandum

Date: November 10, 2011

To: John Kovash, Mayor
Members, West Linn City Council

From: Chris Jordan, City Manager 

Subject: November 14 Council Meeting Agenda Update

Based on discussions at the November 7 work session, the November 14 agenda has been changed as follows:

- The surplus property item has been removed pending staff proposing changes to the municipal code in an effort to simplify and streamline the process.
- Resolution 2011-17 has been added for Council consideration if the Council approves the Intergovernmental Agreement with the Metropolitan Area Communications Commission.
- I have also added a possible executive session regarding the possibility of pending litigation to the end of the Council meeting should the Council decide that this is necessary.

Attached to this memorandum is a power presentation that staff will use to present information about the MACC IGA. I have also attached the memorandum from Nancy Werner and Heather Martin of the Berry Elsner law firm describing the differences between the City's expired franchise agreement with Comcast and the current MACC franchise agreement.

I have also attached a resolution approved by the City of Wilsonville regarding the proposed changes to the Transportation Planning Rule. Council President Carson has indicated that she would like a few minutes to discuss this item during your pre-meeting work session.

Attachment

MEMORANDUM

TO: Chris Jordan, West Linn City Manager

FROM: Nancy L. Werner *NW* and Heather R. Martin *HRM*, Special Telecommunications Counsel

SUBJECT: Comparison of MACC vs. West Linn Cable Franchise

DATE: July 28, 2011

City staff and the Metropolitan Area Communications Commission (MACC) recently began discussing the City's possible participation in MACC.¹ To aid the City's evaluation of that option, this memo provides an overview of the differences between the City's current franchise and MACC's current franchise with Comcast.²

Background

MACC was created through an intergovernmental cooperation agreement between local jurisdictions with the purpose of pooling the strengths and resources of the member jurisdictions for franchising cable systems and services throughout the member jurisdictions' boundaries. MACC currently manages four cable television franchises for 15 jurisdictions in the Washington and Clackamas County areas. On behalf of its members, MACC handles negotiations, management and enforcement of cable franchises, including monitoring compliance with customer service standards, technical performance standards and construction standards. MACC also oversees the Public Communications Network, a public fiber network that links over 200 schools, police and fire stations, other public safety and government buildings at a reduced cost. Finally, MACC manages the public, educational and government (PEG) access facilities supported by the cable operators and member jurisdictions.

In our experience negotiating dozens of cable franchises, we have found in many cases there are advantages for jurisdictions that are members of a multi-jurisdictional entity such as MACC. For example:

¹ The Council should be aware that this office serves as general counsel to MACC, but has not been involved in the discussions between the City and MACC.

² Note that both entities entered into their current franchise with TCI Cablevision of Oregon, Inc., the predecessor to Comcast.

- Its negotiating power will increase given the sheer number of subscribers represented by the multi-jurisdictional entity. It is not uncommon in franchise negotiations for the cable operator to reject a provision the company agreed to with a different jurisdiction simply because the company cannot justify the costs of the provision with fewer customers covered by the franchise.
- Franchise negotiations and other legal issues that arise often are handled by the franchising entity, not the individual jurisdiction, which can significantly reduce the city's costs.
- There is staff to handle rate regulation, customer service, consumer protection issues, construction standards, franchise fee audits/reports, and other issues related to the franchise that would normally be the city's responsibility. This can lead to better service throughout the franchise area.
- Cable operators often are more responsive to a multi-jurisdictional entity because of the number of subscribers at stake. For example, a serious customer service violation subjecting the cable operator to fines will be handled more quickly where the fine will apply to significantly more subscribers, and thus be a much higher fine. Responsiveness in franchise negotiations also is an issue. The City (as well as several other jurisdictions) has been waiting for months for Comcast to respond to the City's proposed draft franchise, but Comcast has openly stated that its priority is to complete franchise renewal negotiations with the Mt. Hood Cable Regulatory Commission, which represents multiple jurisdictions in Multnomah County.

A review of the Comcast franchises with MACC and the City indicates that MACC was able to secure some advantageous provisions for its jurisdictions that are not in the City's franchise. However, it is important to keep in mind that franchise negotiations have been and will continue to be influenced by the ever-changing telecommunications landscape, including changes in the Cable Act and related rules of the Federal Communications Commission (FCC). For example, franchise renewals are more difficult to negotiate now that there is more competition in the market (e.g., cable companies, satellite, internet providers). Cable operators generally scrutinize the costs related to franchises more than they did as monopoly providers. In addition, in 2007 the FCC adopted rules related to competitive equity that have impacted franchise negotiations even in jurisdictions where there are no competing cable operators. Thus, there is no certainty that MACC will be able to retain some of the provisions of its franchise discussed below.

Franchise Comparison

1. Public Communications Network/I-Net - MACC's franchise contains provisions for a Public Communications Network (PCN) which is similar to an I-Net, a term the Council might be more familiar with. The PCN is a separate communications network provided by Comcast designed principally for the provision of non-entertainment, interactive services to schools, public agencies, or other nonprofit agencies for use in connection with the ongoing operations of such institutions. Services provided may include video, audio, and data to PCN subscribers on an individual application, private channel basis. This may include but is not limited to, two-way video, audio, or digital signals. Currently, West Linn does not have a PCN or I-Net.
2. Franchise Fee Reports – MACC's franchise requires automatic quarterly franchise fee reports in addition to an annual report. The City receives an annual report but must request other franchise reports as needed instead of receiving one automatically.
3. Audits/Reviews – Both franchises have provisions for an audit of Comcast's records related to administration or enforcement of the franchise. Both franchises require Comcast to pay the audit costs if it has underpaid franchise fees. Under the City's franchise, Comcast pays if the audit shows a 2% underpayment of the franchise fee, whereas under the MACC franchise Comcast pays if there was a 3% underpayment. (Although this provision makes it easier for the City to get its audit costs paid than for MACC to get its costs paid, our experience is that the high cost of audits prevents most cities from conducting audits even where there is a chance of reimbursement from the cable operator if an underpayment is discovered.)
4. Filing of Rates and Charges – The MACC franchise requires Comcast to maintain a file and provide on request all applicable rates and charges for Cable Service provided under the franchise. (MACC posts the cable operators' rate cards on its website, which can aid consumers in choosing the right service package.)
5. Indemnification – The City franchise indemnification language is broader and more general than MACC's which is more detailed and specific (i.e. includes damage to persons or property, invasion of privacy claims, failure to comply with laws, third party suits or actions). Presumably, the City franchise language would cover these specific events.
6. Performance Bond/Letter of Credit – The MACC franchise requires a performance bond in the amount of \$1,000,000 and a letter of credit in the amount of \$100,000. The performance bond protected the MACC jurisdictions from damages related to Comcast's upgrade of its system (after which the bond was released). The Letter of Credit may be assessed by MACC if Comcast fails to pay sums due under the franchise, sums due for correction of franchise violations and for failure to comply with customer service

standards. The City franchise only contains a performance bond in the amount of \$100,000 with no required letter of credit for violations.

7. Incidental Payment – The MACC franchise contains a provision for an incidental payment upfront and for the first three years of the franchise (i.e., four payments total) of \$200,000 annually, \$50,000 of which must go towards support for the PCN. The City franchise does not have a similar provision.³
8. Installation Service – The MACC franchise contains more comprehensive installation service provisions including response time, appointment windows, and subscriber notice provisions. In effect these provisions are beneficial for the cable customers to ensure their installations occur in a timely and convenient manner.
9. Billing Requirements – The MACC franchise contains more comprehensive billing requirements including, for example, line item breakdowns, processes for complaints, billing dispute procedures, refund timing, and disconnection request timing.
10. Complaints – Both franchises require quarterly reports listing subscriber complaints and the status of Comcast's response to the complaint. The City's franchise requires Comcast to resolve written subscriber complaints mailed to Comcast within 10 days. The MACC franchise does not expressly state the number of days Comcast has to respond to complaints.
11. PEG Access Channels – Comcast provides 6 PEG access channels under the MACC franchise and 5 under the City's franchise.
12. Origination Points – Both franchises require origination points at certain locations in each franchise area to facilitate the transmission of character-generated, pre-recorded, and live broadcasts from the origination points (e.g., broadcasting City Council meetings and community events). The City's franchise has a \$10,000 cap on Comcast's costs for extending/constructing its cable system to provide activated origination points. The MACC franchise does not contain a cap.
13. PEG Access Fee – The MACC franchise has a \$1.00 per month per subscriber PEG access fee to be used for PEG capital costs. The current City franchise required lump sum payments in years 1, 7 and 10 for a total of \$661,000. Comcast's franchise with the City has been extended beyond its original term without amendment, and thus the City is not getting any additional PEG support and will not receive any additional support until

³ Typically, these payments were to cover incidental costs incurred by the franchising authority in negotiation and administering the franchise. In 2007, the FCC issued an order that in many cases allows cable operators to offset their franchise fee payments in the amount of any required incidental payment. As a result, it is unclear if Comcast would agree to a similar provision in the future. However, MACC's Verizon (now Frontier) franchise, negotiated after the FCC order, contains an incidental payment provision that is not deducted from franchise fees, but rather is considered an advance payment of PEG support and Verizon was allowed to effectively offset its PEG support payment in the amount of the incidental payment.

the franchise is renewed. For this reason, a monthly PEG support fee is often more advantageous than a lump sum payment.

14. Promotional Services – The MACC franchise requires Comcast to provide ten free 30-second PEG access channel advertising spots per month and allows MACC to include two bill stuffers per year advertising PEG access channels. There are no similar provisions in the City's franchise.
15. Use of Conduits by Franchisor – The MACC franchise contains a provision whereby the MACC jurisdictions may install or affix and maintain wires and equipment (maintained for governmental purposes) on Comcast's ducts, conduits, or equipment located in the streets without charge to the extent space is reasonably available. There is no similar provision in the City's franchise.
16. Repair and Restoration of Property – The MACC franchise provides protections for public and private property in the event property is damaged by Comcast and requires restoration. The City's franchise appears to cover public property damage but does not specifically provide for private property restoration.
17. Subscriber Network – The MACC franchise contains more detailed and comprehensive provisions regarding the cable system including upgrade requirements, more channels, and more technological requirements.
18. Service Availability – The City's franchise requires service availability for anyone in the franchise area whereas in the MACC franchise, at least 10 residences within one-quarter cable miles of the distribution cable must request service. The City's franchise standard installation is a 150 foot drop and MACC's is 125 foot drop. Outside of those parameters, there might be additional installation charges for subscribers.
19. Connection of Public Facilities – The MACC franchise contains a provision for providing basic and expanded basic cable programming to the jurisdictions' public buildings, libraries and schools. Outlets provided in these buildings may be used to distribute cable service through the buildings provided distribution can be accomplished without causing cable system disruption and general technical standards are maintained. There is no similar provision in the City's franchise.
20. Procedure for Remedying Franchise Violations – The MACC franchise violation provisions are more comprehensive than those in the City franchise. There are also different fines for different types of violations in the MACC franchise. For violating telephone answering standards there are fines per violation starting at \$10,000; all other service standards are set at \$25 per violation. Violations concerning the system design and the PCN are \$1,000 per day and all other violations are \$250 per day. The City's franchise allows for damages not to exceed \$1,000 per day with a \$50,000 cap; there is no cap in the MACC franchise.

21. Renewal – The MACC franchise contains renewal provisions concerning procedures for renewal and needs assessments for future franchises. There are no similar provisions in the City's franchise.
22. Dispute Resolution – The MACC franchise requires that disputes be submitted to mediation (unless either party believes injunctive relief is warranted) before termination of the agreement. There is no similar provision in the City's franchise.

There are other minor differences between the two franchises, but on the whole the terms are fairly similar.

Hopefully, this information will provide guidance for the City as it determines how to proceed with respect to its cable franchise.

Please let us know if you have any questions.

RESOLUTION NO. 2333

A RESOLUTION OF THE WILSONVILLE CITY COUNCIL ADVOCATING CHANGES TO THE PROPOSED AMENDMENTS TO THE OREGON HIGHWAY PLAN AND THE TRANSPORTATION PLANNING RULE.

WHEREAS, the State of Oregon, acting through the Oregon Transportation Commission (OTC) and the Land Conservation and Development Commission (LCDC) is currently considering amendments to both the Oregon Highway Plan (OHP) and the Transportation Planning Rule (TPR); and

WHEREAS, the Mobility Standards specified in the OHP and Section 0060 of the TPR set concurrency standards for transportation improvements coinciding with amendments to the City's Comprehensive Plan, and, in some cases, with zoning amendments; and

WHEREAS, the City of Wilsonville has established its own concurrency policies for public infrastructure to assure that the pace of development does not exceed the community's capacity to provide adequate transportation facilities and services; and

WHEREAS, the City of Wilsonville is concerned about all aspects of land development and transportation within the community and in surrounding areas that impact Wilsonville; and

WHEREAS, Wilsonville is situated such that changes affecting Interstate 5, Interstate 205, regional transportation systems, and freight systems are all of vital importance to the community; and

WHEREAS, the City of Wilsonville is committed to land use and transportation policies that are reasonable and based on common sense, and that transportation facilities function efficiently and effectively.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City advocates for amendments to both the Transportation Planning Rule and Oregon Highway Plan that will:
 - a. Recognizing that transportation impacts are not limited by geopolitical boundaries, require evaluation of transportation impacts beyond the immediate vicinity of a proposed development to determine if significant effects will result; and

- b. Allow all affected local governments the opportunity to participate in and appeal development decisions where multimodal, mixed-use areas (MMAs) are established or where “partial mitigation” is proposed at locations that significantly affect Wilsonville.
- c. After annexation, give cities the option to delay consideration of transportation issues until comprehensive plan amendments allowing more intense development are proposed;
- d. Retain consideration of near-term impacts of development projects, rather than relying exclusively on modeling of long-term planning projections;
- e. Allow development projects to go forward with minimal improvements where de minimis impacts are projected to result;
- f. Allow for creative solutions, including transportation system management solutions and changes to the special geographic areas where reduced standards will apply;
- g. Allow for phased system improvements that are proportional to the increased traffic anticipated as a result of development following comprehensive plan amendments;
- h. Recognize the “vesting” for proposed zone changes that conform with acknowledged comprehensive plans which include acknowledged transportation system plans;
- i. Support existing Oregon businesses, including freight interests, without putting them at a competitive disadvantage when compared to proposed new businesses.

2. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 7th day of November 2011, and filed with the Wilsonville City Recorder this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY of votes:

Mayor Knapp - Yes

Council President Núñez - Yes

Councilor Hurst - Yes

Councilor Goddard - No

Councilor Starr - Yes



CITY OF
**West
Linn**

Intergovernmental agreement with MACC

Agenda Bill 2011-11-14-04

City Council meeting : November 14, 2011

MACC IGA



Purpose: To consider the attached Intergovernmental Agreement under which the City would become a member of the Metropolitan Area Communications Commission (MACC) which would be responsible for the City's cable franchise management and public, education and government (PEG) access television.

Key Dates:

- ◆ August 2, 2011: Joint work session with the Oregon City Commission to discuss options for cable franchise management
- ◆ September 26, 2011: City Council directed Staff to negotiate an IGA with MACC for Council's consideration
- ◆ November 7, 2011: Council requested additional information from Staff
- ◆ November 16, 2011: MACC vote on IGA to include West Linn (if approved tonight)
- ◆ December 31, 2011: Final day to terminate agreement with Oregon City



Responses to November 7, 2011 Worksession questions

Financial comparison:

	WFMC			MACC	
	West Linn			West Linn	
	<i>Franchise %</i>	<i>\$ Amount</i>		<i>Franchise %</i>	<i>\$ Amount</i>
Franchise management	0%	\$ -	Franchise management	18%	\$ 67,500
PEG	24%	\$ 90,000	PEG	10%	\$ 37,500
Legal services	0%	\$ 10,000	Legal services	0%	\$ -
Videography	0%	\$ 10,000	Videography	0%	\$ -
TOTAL	24%	\$ 110,000	TOTAL	28%	\$ 105,000

Expected to save approximately \$5,000 annually.

Additionally, estimated \$70-\$80,000 annually for five years (contribution to WFTV)



Responses to November 7, 2011 Worksession questions

🍃 Broad comparison of current franchise agreements:

MACC	Current agreement
<i>Public Communications Network</i> : intra-city connection to government buildings in MACC (including TVF&R, school districts)	<i>I-Net</i> : connects City Hall, Library, PD, Operations
Quarterly franchise fee reports	Annual franchise fee reports
Audits: Cost is shared by members. Comcast pays if 3% underpayment of fee	Audits: City pays cost. Comcast pays if 2% underpayment of fee
Includes comprehensive installation service provisions (response times, appt. windows)	Less comprehensive service provisions
\$1.00 / mo. PEG fee	Lump PEG payments (expired)

Responses to November 7, 2011 Worksession questions



🌿 Broad comparison of current franchise agreements:

MACC	Current agreement
10 free 30 second PEG advertising spots/mo.	No similar requirements
Includes & private/public property repair damage and restoration	No similar requirements
Requires cable service if 10 residences within ¼ mile request	Service required to anyone in service area
Provides free cable service to all public buildings, libraries and schools	No similar requirements
Includes renewal provisions for renewal and needs assessment for future agreements	No similar requirements (current agreement

Responses to November 7, 2011 Worksession questions



Comparison of franchise management services:

MACC	Current agreement
Enforcement of customer service standards	City Staff responsible
Enforcement of technical /construction standards	City Staff responsible
Franchise fee/audits	City Staff responsible
Rate regulation	City Staff responsible
Consumer protection issues	City Staff responsible

**negotiation leverage and responsiveness from provider expected to favor MACC members*

Responses to November 7, 2011 Worksession questions



🌿 Broad comparison of PEG services*:

MAAC	WFMC
<p><i>TV coverage (TVCTV):</i></p> <ul style="list-style-type: none"> • Four City meetings/mo. free (\$35/hr for additional mtgs) • Estimate 5-7 deliverables year for free • Six channels (2 government) 	<p><i>TV coverage (WFMC):</i></p> <ul style="list-style-type: none"> • Currently pay \$45/hr. • Not limited; based on availability • Five channels (2 government)
<p>New studio to open in Beaverton</p>	<p>New studio in Oregon City</p>
<p>Equipment/studio accessible to members of MAAC (renting equipment requires one time \$30-\$50 fee)</p>	<p>Equipment/studio accessible to members of unincorporated Clackamas Co. and many cities (no fee for equipment rental)</p>

**based on current franchise agreements; NOTE: no change will occur to current Comcast agreement until new agreement is signed – est. 2014)*



Responses to November 7, 2011 Worksession questions

How many producers use PEG access?

	FY 2008	FY 2009	FY 2010	FY 2011	Average
Number of sponsors	18	21	23	23	21
Number of sponsor programs	261	291	279	234	266
Number of active producers	95	84	83	79	85
Total number of users	113	105	106	102	107
<i>Number of active producers by geographic area</i>					
<i>West Linn</i>	23	38	23	17	25
<i>Oregon City</i>	26	20	24	22	23
<i>Clackamas County</i>	11	11	15	15	13
<i>Damascus</i>	1	1	1	1	1
<i>Wilsonville</i>	1	2	-	1	1
<i>Milwaukie</i>	18	13	16	20	17
<i>Source: Willamette Falls Media Center</i>					



Alternatives to existing IGA

- A Memorandum of Understanding with the CCAB and Oregon City to create better financial and management oversight;
- An amendment to the IGA providing for more direct oversight by the two owner cities;
- Transitioning the management of WFTV to Clackamas Community College;
- Engaging other cities in Clackamas County to create a much broader cable management and public access television agency similar to MACC; and,
- Consider joining MACC

After exploring all of these alternatives, the only viable option is to join MACC.

Council Options



1. Approve IGA with MACC. MACC will vote on the IGA at its Nov. 16 meeting.
2. Do not approve the IGA with MACC and continue the existing relationship with Oregon City and the CCAB.