

TO: Lonnie R. Robbins
Chief Administrative Officer

FROM: Lori Sherwood, Cable Administrator

SUBJECT: Ellicott City Cable Resolution Approving Cable Franchise Agreements

DATE: December 23, 2008

I write to request that the County Council approve these two resolutions granting Ellicott City Cable Company, LLC two identical secondary cable franchise agreements for the communities of Taylor Village and Waverly Woods.

Background

On May 5, 2008 the County Council passed Resolution Nos. 31-2008 and 32-2008 that granted the secondary cable television franchise application received from Ellicott City Cable Company for Taylor Village and Waverly Woods, respectively. According to Section 14.408(e) of the Howard County Cable Television Systems Franchise Act, the County and Ellicott City Cable Company are required to agree on the terms of a franchise agreement within 90 calendar days from May 5, 2008 unless the period is extended by the County Council.

Pursuant to Section 14.408(e) of the Howard County Cable Television Systems Franchise Act, the County Council subsequently approved two 90 day extensions of time to allow the parties to complete franchise negotiations.

After many hours of negotiation, the parties have reached mutual agreement on two identical cable franchise agreements.

Synopsis of Agreements

The Verizon Franchise Agreement executed January 17, 2006 served as the template for the Ellicott City Cable franchise agreements. These proposed franchise agreements are largely the same except for some areas where we needed to adapt the language to reflect the technical differences of the cable systems and the unique limitations of Ellicott City Cable, a secondary franchisee applicant.

I have attached a side by side comparison chart of the differences by section between the Verizon and Ellicott City Cable franchise agreements.

In addition, I would like to highlight several major points of the agreements.

1. PEG Interconnection and PEG Solution

One of the benefits of a cable franchise agreement is the ability of subscribers to receive transmission of local Public, Educational and Government Access (PEG) channels.

Traditionally, a cable franchisee would be responsible for paying the costs associated with interconnecting the cable system directly to the PEG access studios. Once connected to the studios, the cable system would be able to directly transmit those signals to their customers.

For full franchise holders with a county-wide footprint, this method of interconnection is reasonable and required. In this case, this method of interconnection is not viable for several reasons.

First, Ellicott City Cable has two wire centers (headends) that would each need to be connected to the PEG access studios and designated PEG interconnection points. These headends are located in an area that makes this requirement cost-prohibitive (due to distance) and unreasonable for a secondary franchise. Second, Comcast and Verizon are unable to provide a cost-effective alternative for interconnection for purposes of PEG transmission. Unlike Comcast and Verizon, Ellicott City Cable is a secondary franchise applicant, has a limited service area and cannot exceed a maximum of 2800 paid subscribers.

Given these unique circumstances, the parties have agreed to an alternative PEG solution.

In lieu of traditional PEG interconnection, Ellicott City Cable will provide Howard County with a total grant of \$70,000 to be used to upgrade PEG access so that County Council hearings and meetings, and Board of Education meetings can be web-streamed live and available on demand on the Web.

This PEG solution not only enables Ellicott City Cable customers to access important government hearings and events, but it also provides an important public service by enabling all Howard County citizens to do the same.

Nothing in these agreements prevents Ellicott City Cable from interconnecting with Comcast and Verizon and providing traditional PEG programming in the future. The agreements do provide guidance on interconnection should this occur.

The County agrees that this PEG solution satisfies the PEG requirement for Ellicott City Cable.

2. PEG/I-NET grant

The Verizon franchise agreement requires Verizon to pay the County a quarterly fee of \$.20 per subscriber for PEG/I-NET support. Ellicott City Cable is required to pay a quarterly fee of \$.10 per subscriber. The reduction is reflective of the fact Ellicott City Cable is unable to provide traditional over-the-air PEG programming at this time. Should Ellicott City Cable begin to offer traditional PEG programming, the fee increases to the same \$.20 per subscriber that Verizon pays.

3. Customer Service issues

During the course of negotiations and per County's request, Ellicott City Cable shifted from a two-billing system to an integrated one-billing system. This is far superior for the customer and directly addresses the basis of many 2006-2007 complaints.

The Cable Office has not received any Ellicott City Cable complaints since 2007.

Ellicott City Cable has also corrected all the technical and other service related issues identified during a 2007 technical audit of the system.

Fiscal Impact

There is a nominal fiscal impact.

Recommendation

I recommend approval of these resolutions awarding Ellicott City Cable two cable franchise agreements for the developments of Taylor Village and Waverly Woods.

Side by Side Comparison
Verizon Franchise Agreement and Ellicott City Cable (“ECC”) Franchise Agreement

Franchise Sections	Verizon Agreement	Ellicott City Agreements
Section 1 Definitions		No substantive changes. ECC franchises contain the additional definition of secondary franchise.
Section 2.3 Term	Franchise term is 15 years	Franchise term is 10 years. Cable franchise agreements are typically between 7-15 years. In this case, 10 years is more appropriate for a secondary franchise.
Section 3.1 Service Area	Service Area = entire County	For ECC, each franchise is limited to the developer-owned areas identified on Exhibit B. The initial service area for ECC, is that part of each development that currently receives cable service. The Extended area includes parts of each development that have not been built or are not ready for service. The time-frames for build out and service have been adjusted to reflect the size of each development and the nature of the secondary franchise. Should ECC desire to expand beyond the boundary of the full service area, they must come back to the county for negotiation for an amendment to the agreements still meeting the requirements for a secondary franchise holder.
Section 3.3 Cable Service to public buildings	Must provide free drops to public buildings within service area footprint with qualifications.	Currently, there are no public buildings within the ECC service area footprint. Should there be any public buildings built in the future within the ECC service area footprint, ECC will be required to provide free drops (meeting the same qualifications as Verizon) to those buildings.
Section 4 and 5.1		ECC franchise agreement revisions on these sections reflect the particular type of system design and technology employed by ECC. Columbia Telecommunications Corporation (Telecommunication Systems Engineering) reviewed and approved these sections. Additionally, ECC corrected all technical problems and issues identified by CTC in 2007.
Section 5.2		ECC is additionally required to provide the County with detailed design maps and plans 90 days prior to the construction date for making changes to the technical design of their cable system. The County has an opportunity to submit comments within 30 days.
Section 5.4.3 Emergency Alert	EAS provisions follow federal law	EAS provisions follow federal law provisions that apply to Franchisees with less than 5000 total subscribers.
Section 6 PEG Services		Section customized for ECC. See narrative above on PEG revisions

Section 7 Franchise Fees		No substantive changes.
Section 8 Customer Service		Added section 8.5.2 which allows ECC customer service representatives to use a voicemail messaging system to help answer calls if a live representative is not available. Unlike Comcast and Verizon, ECC has one small business office and does not have a national call center. All calls received via automated messages, must be returned by the next business day, or the same day if the next day is a weekend or holiday.
Sections 9-12		No substantive changes
Section 13.3.1 Performance bond	\$90,000 performance bond	Unlike Verizon at the time its franchise agreement was approved, ECC has already built its plant to the initial service area and has been operating as a private cable company for 3 years. To reflect the completion of this construction as well as the size of the secondary franchise, ECC's bond is \$25,000 (\$12,500 per franchise). If and when ECC undertakes construction to the extended service area and beyond, the County may require an increase in this amount
Section 13.4 Security Fund	\$10,000 security bond	ECC's Security fund requirement is \$5,000. This is in recognition that ECC is a secondary franchise holder
Section 13.5 Liquidated Damages; Exhibit E	Maximum of \$20,000 aggregate	No changes in the per diem rates. Amount of all liquidated damages not to exceed \$10,000; in aggregate (\$5,000 per franchise). This is in recognition that ECC is a secondary franchise holder.