Resolution No.: 15-1718
Introduced: October 10, 2006
Adopted: November 28, 2006

COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND

By: Management and Fiscal Policy Committee

SUBJECT: Grant of franchise to Verizon Maryland Inc. to use the public right-of-way for a cable system

Background

1. Section 49-11 and 49-12 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:

   a) the franchise applicant publishes the application once a week for three consecutive weeks in a newspaper of general circulation in the County;

   b) the County Executive makes "diligent inquiry" into the value of the franchise and the adequacy of the proposed compensation the applicant will pay to the County;

   c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after publication of the application;

   d) the Executive makes a written recommendation to the Council about the franchise, including a description of the application and any objections to it, findings about the value of the franchise, and any other relevant matters; and

   e) the Council decides that the franchise is expedient and proper.

2. Chapter 8A of the County Code governs franchise agreements for cable systems. In evaluating an application for a new cable franchise, the County must consider:

   a) the applicant's character; the applicant's technical, financial, and legal qualifications to construct and operate the proposed system;

   b) the nature of the proposed facilities, equipment, and services;

   c) the applicant's record of cable performance in other communities, if any; and

   d) whether the proposal will serve the public interest.

3. The Council may, within the applicable time provided in Section 8A-28(d): grant the franchise; grant the franchise with conditions, which may modify or override any provision of the proposed franchise agreement; remand the franchise agreement to the Executive with specific recommendations to renegotiate any provision of the proposed franchise agreement and submit a revised agreement to the Council for approval; or deny the application for a franchise.

4. On September 13, 20, and 27, 2006, notice was published about the Verizon Maryland Inc. application for a franchise to use the public right-of-way to operate a cable system. The Executive received many comments by the October 2, 2006 deadline and conducted a hearing on the franchise application on September 28, 2006.

5. On October 6, 2006, the Council received the Executive's recommendation to grant a franchise to Verizon Maryland Inc. for a 15-year cable television franchise. The Executive reviewed the legal, financial, technical, and character qualifications of the franchisee; evaluated whether the agreement would have an adverse impact on services; and found that the agreement will serve the public interest.

6. On October 31, 2006, the Council held a public hearing on the proposed franchise agreement.

7. On October 30, November 13, and November 27 2006, the Council's Management and Fiscal Policy Committee considered the franchise application and the criteria for granting a cable franchise agreement and (3-0) recommended approval of the proposed franchise agreement with amendments.

8. The Committee and Council recommend the following changes or amendments to the proposed franchise agreement or agreed that the franchisee would provide additional documentation as an attachment to the franchise agreement:

    a) modify the trigger and the timeframe for the deployment of cable service to the "Expanded Service Area" to three years, once the number of franchisee subscribers reaches 75,000 in the County (§ 3.1.4);
    b) provide additional cable service deployment timeframes to address concern about what constitutes a "significant" number of subscribers (§ 3.1);
    c) add language to clarify that multiple dwelling units are included in the deployment schedule (§ 3.2.2);
    d) agree that the franchisee will provide a side letter regarding providing service to businesses in the County;
    e) modify language regarding providing "as-built" maps (§ 9.13.9);
    f) amend the definition of "system outage" (Exhibit D I);
    g) agree that the franchisee will provide a side letter explaining that customer service calls cannot currently be broken out by geographic jurisdiction or by the type of complaint, but stating that the franchisee is committed to providing this data to the County for calls answered in 30 seconds by January 1, 2008;

h) add language to ensure that customers can reach a customer account executive during normal business hours at the franchisee's call centers (Exhibit D II § D);
i) add language requiring that the franchisee maintain a local business office in the County, once the franchisee has 50,000 subscribers in the County (Exhibit D II § E);
j) add language to ensure that Verizon complies with FCC guidelines related to call answering times (Exhibit D II § G);
k) add language clarifying the term "respond" as it relates to service interruptions and repairs (Exhibit D II § L);
l) delete Exhibit D II § M and amend Exhibit D II § AA(1) so the standards for repair times are comparable to other franchise agreements;
m) delete the phrase "at their sole discretion" which relates to when customer service representatives will issue service credits for missed appointments and service interruptions (Exhibit D II § N);
n) amend the language dealing with credits for service interruptions (Exhibit D II § O), and delete Exhibit D II § P so these policies are comparable to other franchise agreements;
o) modify language related to service times and appointment windows to remove the reference to "during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception" and delete "These hour restrictions do not apply to weekends." (Exhibit D II § AA(2));
p) modify language in the franchise agreement to provide for a letter of credit in lieu of a performance bond to address concerns about the performance bond language (§ 13.5);
q) amend §§ 1.33, 9.10.4, 11.9.3.2, 11.9.4, and Exhibit D II § C of the franchise agreement to ensure that the agreement mirrors changes made to the County's Cable Law.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The Council finds that granting a franchise to Verizon Maryland Inc. for use of the public right-of-way for a cable system is expedient and proper and will serve the public interest. The Council grants with amendments the franchise agreement dated November 28, 2006, and authorizes Council staff to insert conforming amendments consistent with this resolution.

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council