

Report to the County Executive
Regarding the Proposed Grant
of a Cable Television Franchise Renewal
to
Starpower Communications L.L.C., dba RCN
by
The Office of Cable and Broadband Services,
Montgomery County Department
Of Technology Services

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I. EXECUTIVE SUMMARY

This report addresses the proposed Renewal Franchise Agreement (“Franchise Agreement”) between Montgomery County and Starpower Communications L.L.C. dba RCN (“RCN”), and one related proposed agreement between the County and RCN: a Settlement Agreement. RCN entered the Montgomery County cable service market by overbuilding the cable system of the incumbent provider to serve County residents. RCN initially agreed to serve the entire County on terms equivalent to the incumbent provider, but subsequently requested relief from the County due to changed market conditions. In order to support competitive choice, the County agreed to allow RCN to provide Internet service to the County government buildings and schools in exchange for a reduction in build-out requirements.

RCN submitted the proposed Franchise Agreement and related Settlement Agreement to the County pursuant to Section 8A-22(f) of the Montgomery County Code. The proposed agreements are the products of extended negotiations with the County through the Office of Cable and Broadband Services, Montgomery County Department of Technology Services (“Cable Office”). The Franchise Agreement renews RCN’s cable franchise, which authorizes RCN to use County rights-of-way to provide cable services. The proposed renewal Franchise Agreement does not alter RCN’s existing geographic service area, but together with the Settlement Agreement, provides for enhanced County-wide benefits in other ways which complement the commitments of other cable providers serving the County.

For example, in lieu of constructing institutional network connections, RCN has agreed to provide Metro Ethernet service at highly discounted rates, and in lieu of building additional free cable service connections to government buildings and schools, RCN has agreed to work

with the County to deliver cable service in an IP format , using the County's Institutional Network as the distribution network. If successful, it will allow the County to avoid costly upgrades to inside wiring in government buildings and schools that might otherwise be required to continue to receive such programming. The Cable Office recommends that the County Executive approve the proposed Franchise Agreement and related Settlement Agreement because the proposed agreements will serve the interests of cable subscribers and the County.

II. THE PROPOSED FRANCHISE AGREEMENT.

a. Overview.

The Cable Office, with the assistance of the Office of the County Attorney negotiated the terms of the proposed Franchise Agreement with representatives of RCN. The Cable Office has considered the interests of all the affected parties - including County residents, cable subscribers, the municipalities within the County, the Montgomery County Public Schools, Montgomery College, County government, and outside agencies - in an effort to achieve an equitable balance among all of those interests. We have also considered the effects of the proposed Franchise Agreement on the County's agreements with other cable operators, Verizon Maryland Inc. and Comcast of Potomac, LLC.

b. Summary of the Proposed Franchise Agreement.

The proposed Franchise Agreement permits RCN to serve all parts of the County, but continues only to require RCN to serve the more limited area which it currently serves. However, the proposed Franchise Agreement now requires RCN to serve businesses as well as residents in its service area which supports the County's economic development goals. In

addition, RCN may expand this service area at any time through a mechanism that allows the County to ensure that expansions are non-discriminatory. Despite this limited service area, the Franchise Agreement requires RCN to work with the County to provide community-wide benefits that would allow the County to deliver programming to schools and public buildings via the Institutional Network ("I-Net"). The Franchise Agreement also provides the County and participating municipalities with grants for PEG and Institutional Network purposes. The value of these commitments is enhanced by the separate Settlement Agreement. Through the Settlement Agreement, the County and participating municipalities will be able to use PEG and I-Net Grants for capital or non-capital support for PEG purposes.

The general terms of the proposed Franchise Agreement related to police powers, use of rights of way, bonding and the like are modeled on the existing franchise except where updates were deemed necessary or advisable. Customer service provisions were updated to address current practices and trends. These general terms are at least as favorable and in some respects are more favorable for the County than the general terms of the Comcast and Verizon franchises.

The principle terms of the proposed Franchise Agreement are as follows:

- i. *Term.* The Franchise Agreement will have a term of 15 years and will expire in 2030.
- ii. *Service Territory.* RCN may serve the entire County, but must serve a limited franchise area within the County. Within its service area, RCN must provide cable service to all individuals, residences, businesses, and other legal entities, including owners or occupants of multiple dwelling units that request cable service, except for multiple dwelling unit buildings to which RCN cannot legally obtain access or cannot reach an agreement for access after good faith negotiation with the building owner.
- iii. *Franchise Fee.* RCN must pay a 5% franchise fee on gross revenues derived from the operation of the cable system to provide cable service. This is the same as the fee

Verizon and Comcast have been paying, and the same as RCN is paying under its existing franchise.

iv. *PEG and I-Net Support.*

1. RCN will continue to pay 3% of its gross revenues to the County as a “PEG and I-Net Grant”. These funds can be used for the PEG and Institutional Network purposes as determined by the County . Verizon also pays 3% as would Comcast under its proposed renewal franchise. Under the Settlement Agreement, the County will be able to use RCN’s PEG and I-Net Grants for capital or non-capital support for PEG purposes (see discussion below).

2. RCN has an obligation to provide courtesy cable service to all facilities owned or operated by Montgomery County or the Board of Education of Montgomery County within the RCN service area. However, under the Settlement Agreement, RCN is allowed to satisfy this obligation through alternative performance requirements (see discussion below) that are beneficial to the County.

v. *PEG Channels.*

1. RCN now provides 13 PEG channels in standard definition, or SD. Under the proposed Franchise Agreement, RCN will provide at least 13 PEG channels in standard definition and at least 13 PEG channels in high definition or HD. RCN also commits to work with Takoma Park to add a channel to its lineup in Gaithersburg that would allow residents there to view the Takoma Park PEG channel. Up to nine HD channels may be activated by December 13, 2017, and the County may require the remaining 4 HD channels to be activated within seven years of the effective date of the Franchise Agreement. All PEG channels carried in HD format must also continue to be carried in SD format, unless RCN demonstrates to the satisfaction of the County that its HD services penetration rate is eighty (80) percent of Subscribers’ service outlets or greater.

2. The proposed Franchise Agreement requires RCN to treat the PEG channels the same way it treats the local broadcast channels it carries. The channels must be accessible from program guides, recordable in the same way, and be equivalent in quality from the perspective of the viewer.

vi. *I-Net.* The County relies on an I-Net (also referred to as “FiberNet”) for critical data and video communications. The proposed Franchise Agreement requires RCN to provide an institutional network acceptable to the County, but permits RCN to agree to provide contributions to support deployment of an institutional network by the County, or provide other facilities or services to provide functionalities that could be provided via an institutional network. In the Settlement Agreement, RCN agrees to provide alternative services, facilities and contributions (see discussion below).

III. THE SETTLEMENT AGREEMENT.

a. Summary of the Proposed Settlement Agreement.

The proposed Settlement Agreement permits RCN to satisfy certain obligations under the Franchise Agreement through alternative performance which provides community-wide benefits which are complementary to the commitments of other cable providers serving the County.

- i. In lieu of providing an institutional network acceptable to the County, RCN agrees:
 1. To provide and maintain for the County's use, a Metro Ethernet connection (minimum of 1 Gbps) at the data center within the County Council Office Building, which will be upgraded to 5 Gbps immediately upon installation of additional equipment by RCN that would enable the County to access the Internet at ten (10) Gbps (which equipment is to be installed within 60 days of signing the Settlement Agreement). This connection may be further upgraded upon the County's request. RCN may deduct \$5,500 per month from the PEG and I-Net Grant for as long as the County uses the Metro Ethernet connection to access the Internet at 5 Gbps or less, and may deduct an additional \$1,100 per month from the PEG and I-Net Grant payment for each additional 1 Gbps increase in the Metro Ethernet connection speed. [The competitive current market rate for 1 Gbps service is estimated to be \$3,000 per month.]
 2. To provide the same level of technical and customer service for the Metro Ethernet as RCN provides for business customers that receive similar levels of Internet service.
 3. To assist in relocating the County's Metro Ethernet connection to an alternate location as the County may designate.
 4. To provide the City of Takoma Park, MD:
 - a. free cable modem service and equipment at four locations, and a fiber connection from the Takoma Park City Hall to RCN's IP network; and
 - b. a free Metro Ethernet connection at a minimum of 20 Mbps (symmetrical) at the Takoma Park City Hall;

5. To provide free cable modem service and equipment at one location to any participating municipalities with at least 100 RCN subscribers (other than Takoma Park), upon request;
6. To provide up to 30 DHCP-assigned IP addresses for cable modem service as requested by the County or participating municipalities, and to assist in maintaining current IP addresses and port existing IP addresses to new equipment or network configurations.

ii. In lieu of certain free cable service obligations and the obligation to construct individual cable service drops to County buildings and schools, RCN agrees to the extent commercially practicable to provide the following services, facilities, and contributions:

1. Provide at no charge, a select list of HD and SD cable channels (which may be amended) and all PEG Access Channels now existing or hereafter activated, to the County TOC or other designated County location;
2. Permit and assist the County in converting these cable channels into Internet protocol television (IPTV) signals that may be distributed over the I-Net which would allow more agencies can get access to important news and weather programming, and schools locations get more access to educational programs, with minimal new investment required by the County;
3. Provide such data or services as necessary to enable the County to develop an interactive program guide for the IPTV signals;
4. Work in good faith to resolve legal and technical issues and develop commercially practicable solutions to obtain contractual, copyright licenses, and other legal rights needed by the County to convert and distribute the channels for non-commercial purposes.

iii. RCN also agrees that:

1. The County participating municipalities may use the PEG and I-Net Grant, in their sole discretion for capital or non-capital support for PEG purposes, including the operation of the I-Net and payment of any monetary obligations arising pursuant to the Settlement Agreement;
2. RCN will submit a filing fee of \$10,000 with its application for franchise renewal and pay up to \$10,000 towards the cost of review of any future transfer approval request by RCN.

RECOMMENDATION.

Overall, the Cable Office believes that the agreements in combination represent a reasonable compromise that serves what were the County's major goals going into renewal, including preservation of PEG channels and grants additional support and enhancements for the I-Net. There could be substantial risks associated with rejecting the proposed Franchise Agreement, and a loss of the significant benefits provided under the Settlement Agreement with respect to use of PEG and I-Net grants for non-capital support. Therefore, the Cable Office recommends approval of both agreements.