

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Resolution No. 443 - Approving Transfer of Cable Franchise from Frontier Communications Corporation to Northwest Fiber, LLC
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Christina Arcidy, Management Analyst
ACTION:	<input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On May 28, 2019, Frontier entered into a purchase agreement with Northwest Fiber, LLC (NW Fiber). As a result, NW Fiber became successor-in-interest to the assets of Frontier. In order for NW Fiber to operate, maintain, repair and further construct the cable television system established by Frontier in the City of Shoreline, the City Council must approve the request to transfer the franchise agreement to NW Fiber from Frontier. Proposed Resolution No. 443 approves this transfer and assigns the Franchise Agreement from Frontier to NW Fiber; confirms NW Fiber's acceptance of all the rights and responsibilities established by the terms and conditions of the franchise; and confirms that the terms and conditions of the existing agreement continue in full force and effect.

RESOURCE/FINANCIAL IMPACT:

There is no financial impact to the City of Shoreline. All the cable franchise provisions remain intact, therefore there will be no change in the franchise fee revenue collected by the City.

RECOMMENDATION

Staff recommends that Council adopt Resolution No. 443 which would grant a transfer of control of the cable franchise granted to Frontier Communications Corporation to Northwest Fiber, LLC.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

On October 27, 2008, the City Council adopted Ordinance No. 522, granting a non-exclusive cable franchise to Verizon Northwest Inc. (Verizon) for 12 years to construct, maintain, operate, and repair a cable television system in the City's rights-of-way. On September 14, 2009, City Council adopted Resolution No. 289, transferring the control of Verizon's franchise to Frontier Communications Corporation (Frontier) after Verizon transferred their wireline business in Washington to Frontier.

On May 28, 2019, Frontier entered into a purchase agreement with Northwest Fiber, LLC (NW Fiber). As a result, NW Fiber will acquire control of all of Frontier's operations, networks, and systems that currently provide voice, video, and broadband service in the Pacific Northwest, specifically the states of Idaho, Montana, Oregon, and Washington. In order for NW Fiber to operate, maintain, repair and further construct the cable television system established by Frontier in the City of Shoreline, the City Council must approve the request to transfer the franchise agreement to NW Fiber from Frontier.

According to FCC's rules, the City has a maximum of 120 days from the date of receipt of the notification to review the transfer and take any action the City deems necessary. The City is not required to take action, however, in such case consent will be deemed granted upon the expiration of the 120-day review period. Staff reviewed the transfer and recommends City Council take action regarding the transfer.

DISCUSSION

Because NW Fiber is seeking the transfer of an existing franchise and is not an applicant for a new franchise, a number of requirements in the City's Municipal Code do not apply. However, NW Fiber has provided much of the same information required of a new franchisee in order to demonstrate its ability to operate, maintain, repair, and further construct the cable television system in Shoreline. To provide a recommendation to the City Council on whether to approve or deny the franchise transfer from Frontier to NW Fiber, staff reviewed NW Fiber's Federal Communications Commission (FCC) Form 394 to determine if they have the financial, technical, and legal qualifications to carry out the obligations identified in the franchise. Staff's analysis of these qualification is as follows:

Financial

- NW Fiber meets the financial qualifications necessary to carry out the franchise:
 - NW Fiber will be owned jointly by WaveDivision Capital VII, LLC (WDC) and investment funds affiliated with Searchlight Capital Partners, LP (Searchlight).
 - At the close of the transaction between Frontier and NW Fiber, NW Fiber expects to have approximately \$300 million in cash on its balance sheet at closing.
 - NW Fiber is a new entity without prior operations and therefore does not have any financial statements prepared in the ordinary course of business.

Technical

- NW Fiber meets the technical qualifications necessary to assume control of the franchise:
 - NW Fiber will be run by professionals at the management and operational levels with a long history of deploying and operating communications networks in the Pacific Northwest.
 - NW Fiber's managerial team will be supported by managers, directors, and supervisors who form part of the more than 1,000 transferring Frontier employees in the four states. These management and other personnel have expertise and experience on a range of key operational functions, including customer service, customer care and support, network engineering and support, emergency management and public safety, interconnection issues, and regulatory reporting and compliance. It also includes all of the current technical employees who serve the existing customers, and whose experience includes network deployment, network and traffic routing, information technology, and ordering and billing systems.

Legal

- NW Fiber meets the legal qualifications necessary to assume control of the franchise:
 - The current Frontier cable franchise will remain intact and no portions of the document will be amended. NW Fiber will be held to and comply with all the legal obligations currently mandated of Frontier.
 - NW Fiber will conduct business in accordance with all applicable laws, rules, and regulations.

Granting of Franchise Transfer

Proposed Resolution No. 443 would approve this transfer and assign the Franchise Agreement from Frontier to NW Fiber; confirm NW Fiber's acceptance of all the rights and responsibilities established by the terms and conditions of the franchise; and confirm that the terms and conditions of the existing agreement continue in full force and effect.

RESOURCE/FINANCIAL IMPACT

There is no financial impact to the City of Shoreline. All the cable franchise provisions remain intact, therefore there will be no change in the franchise fee revenue collected by the City.

RECOMMENDATION

Staff recommends that Council adopt Resolution No. 443 which would grant a transfer of control of the cable franchise granted to Frontier Communications Corporation to Northwest Fiber, LLC.

ATTACHMENT

Attachment A: Resolution No. 433, Transferring Control of the Cable Television Franchise Granted to Frontier Communications Corporation to Northwest Fiber, LLC.

RESOLUTION NO. 443

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, CONSENTING TO THE TRANSFER OF CONTROL OF THE CABLE FRANCHISE GRANTED IN ORDINANCE NO. 522.

WHEREAS, on October 27, 2008, the City Council adopted Ordinance No. 522, granting a 12-year Franchise to Verizon Northwest Inc. (“Franchisee”), with the Franchise effective until November 6, 2020; and

WHEREAS, on September 14, 2009, the City Council adopted Resolution No. 289 consenting to the transfer of control of the Franchisee to Frontier Communications Corporation (“Frontier”); and

WHEREAS, on July 1, 2010, the Franchisee changed its corporate name from Verizon Northwest Inc. to Frontier Communications Northwest Inc.; and

WHEREAS, on May 28, 2019, Northwest Fiber LLC entered into a Purchase Agreement with Frontier by which the Franchisee will reorganize as a limited liability corporation and will then become a direct, wholly-owned subsidiary of Northwest Fiber and, pursuant to the Purchase Agreement, the ultimate control of the Franchise will transfer to Northwest Fiber; and

WHEREAS, pursuant to 47 USC §537 and Section 11 of the Franchise, Frontier and Northwest Fiber have required written consent by the City for the transfer of control; and

WHEREAS Frontier and Northwest Fiber have executed a Federal Communications Commission (“FCC”) Form 394, together with attachments, collectively the “Transfer Application,” which documents more fully the transfer and the requests for the City’s consent to the transfer; and

WHEREAS, the City Council considered the Transfer Application and all applicable and relevant factors, and deems it to be in furtherance of the public interest and welfare of its citizens to consent to the transfer request, subject to appropriate conditions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, HEREBY RESOLVES:

Section 1. Consent Approved. The City of Shoreline, as the franchise authority, consents to the transfer of control from Frontier Communications Corporation to Northwest Fiber LLC as set forth in the Transfer Application. Upon transfer, Northwest Fiber shall comply with all of the terms and conditions of the Franchise granted by Ordinance No. 522.

Section 2. Franchise in Full Force and Effect. The City of Shoreline confirms the Franchise granted by Ordinance No. 522 is in full force and effect and expires on November 6, 2020.

Section 3. Representations of the City. With passage of this Resolution, the City of Shoreline makes no representations concerning whether any violations or non-compliance exist with respect to the Franchise. Nothing in this Resolution shall be construed by Frontier or Northwest Fiber as precluding the City from addressing any prior acts of noncompliance by Frontier, pursuant to the terms and conditions of the Franchise.

Section 4. Effective Date of Consent and Notice. The City of Shoreline's consent shall not take effect until such time as Frontier and Northwest Fiber consummate the proposed transaction described in the Transfer Application. Northwest Fiber shall notify the City by sending written notice to the City Clerk within thirty (30) days of the closing of the transaction.

Section 5. Severability. If any one or more sections, subsections, or sentences of this Resolution are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Resolution and the same shall remain in full force and effect.

Section 6. Effective Date of Resolution. This Resolution shall take effect and be in full force immediately upon passage by the City Council.

ADOPTED BY THE CITY COUNCIL ON SEPTEMBER 16, 2019.

Mayor Will Hall

ATTEST:

Jessica Simulcik Smith
City Clerk