Council Meeting: 12/15/2009
Agenda: Unfinished Business
Item #: 10. a.

CITY OF KIRKLAND
Information Technology Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3050
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Brenda Cooper, Chief Information Officer;
Janice Perry, Multimedia Communications Manager

Date: December 4, 2009

Subject: Staff Report Recommending Approval of Verizon Application for Transfer of Control of Verizon Northwest, Inc. to Frontier Communications Corporation

RECOMMENDED ACTION

It is recommended that the City Council adopt the attached resolution:

(1) APPROVING the transfer of control of the cable franchisee, Verizon Northwest Inc., from Verizon Communications, Inc. to Frontier Communications Corporation, subject to the terms and conditions in the "Transfer of Control Agreement" (**Attachment A to the Resolution**); and

(2) AUTHORIZING the City Manager to execute the Transfer of Control Agreement on behalf of the City which sets forth the terms under which the City is willing to grant its consent to the change of ownership and control of the Verizon Northwest Inc.

BACKGROUND

The issue before City Council is whether the City should approve the proposed transfer of control of the cable franchisee, Verizon Northwest Inc. ("Franchisee"), from Verizon Communications Inc. ("Verizon") to Frontier Communications Corporation ("Frontier") under the terms and conditions that Staff has negotiated with the companies which are set out in the proposed Transfer of Control Agreement ("Transfer Agreement").

Franchise Agreement

Verizon Northwest Inc. (the Franchisee) has provided local telephone service to residents of the City for many years. It entered the local cable television market only in November 2008, after the City granted a 10 year cable franchise and entered into a Franchise Agreement with the Franchisee. The Franchisee currently offers its Verizon FiOS TV service in competition to Comcast and satellite providers.

Proposed Sale/Transfer of Control

In May 2009, Verizon and Frontier announced that they had reached a deal for Frontier to acquire Verizon's telephone networks in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada,

North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin, and some rural assets in California. The assets being sold include the Franchisee and the telecommunications and cable system serving residents of the City. They do not include any of Verizon's wireless assets or networks. Verizon represents that the proposed sale is consistent with its strategy to divest landline networks in less populous areas. For Frontier, a predominantly rural telephone company, the acquisition has been billed as an opportunity to more than double the size of its operations.

Various aspects of the proposed sale require the prior approval of numerous federal and state regulatory authorities, including the Federal Communications Commission ("FCC") and the Washington Utilities and Transportation Commission ("WUTC"). The FCC has received written submissions from the companies, and other interested parties concerning the proposed transfer of Verizon's federal authorizations and licenses associated with the sale, and is currently considering that evidence. For its part, the WUTC has scheduled an evidentiary hearing on the proposed sale for December 15 to 18, 2009.

Transfer Review Authority of the City

Section 10 of the Franchise Agreement provides that the prior consent of the City is required for a "Transfer of the Franchise" which includes any transaction in which ownership in the Franchisee is transferred, directly or indirectly from one person or group to another person or group so that control of the Franchisee is transferred.

Federal cable law, 47 U.S.C. §537, states that where a franchise requires the franchising authority's approval of a "sale or transfer" of the franchise, there is a 120-day period for review of a transfer application but that period does not begin to run until the applicants submit "such information as is required in accordance with [FCC] regulations and by the franchising authority." The FCC has developed an application form for cable companies to use to submit transfer approval requests to franchising authorities, which is known as FCC Form 394. Section 76.502 of the FCC's Rules states that a franchise authority has 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise or applicable state or local law, to act upon a transfer application. Federal law further provides that if the franchising authority fails to render a final decision on the request within 120 days, the request shall be deemed granted unless the applicant and the franchising authority agree to an extension of time.

Because Verizon's proposed sale of the Franchisee to Frontier involves a "Transfer of the Franchise" (as defined in Section 10 of the Franchise Agreement), the City's prior consent to the proposed transfer of control of the Franchisee is required under the Franchise Agreement and federal cable law, and the City would have 120 days to act from the submission of a completed transfer application.

Transfer Request/Date to Approve or Deny

On June 1, 2009, Verizon submitted to the City a formal application (including an FCC Form 394 and other transaction documents) ("Application") seeking the City's consent to the proposed transfer of control of the Franchisee. While the City and the companies disagree and have reserved their rights as to whether and when a "completed" Application was received, they did agreed to toll the date for City action on the Application twice, most recently to December 31, 2009.

Standard for Review and Review Process

In considering whether to consent to a transfer request, the City examines the legal, financial and technical qualifications of the proposed transferee of control, in this case Frontier, to perform the terms of the deal negotiated with the company that controls the existing franchise holder, in this case Verizon. Per Section 10.1 of the Franchise Agreement, the City's consent "shall not be unreasonably withheld, delayed or conditioned."

Staff engaged outside legal and financial experts to assist with the evaluation of the Application and negotiations on possible transfer conditions with the companies. Specifically, the City retained the law firm Miller & Van Eaton, PLLC, and contributed to the cost of the financial expert (Michael Katz) who was retained by several Oregon jurisdictions to review and report on the proposed sale. Also, Staff was in contact with its counterparts at some other local governments affected by the proposed sale, both in Washington and in Oregon.

As contemplated by the Franchise Agreement, Staff and its advisors examined various issues related to the proposed transfer of control described in the Application. Several information requests were made to the companies, and responses received and evaluated. A nondisclosure agreement was entered into to permit Staff and its advisors to view certain documents and information that the companies believed to be confidential. In addition, Staff met with the companies several times to discuss the potential risks and benefits of the proposed transfer.

Staff Evaluation and Concerns

In reviewing the Application, Staff was particularly concerned about the potential risk to the City that Frontier was less able than Verizon to perform the promises contained in the Franchise Agreement. These risks arose from the apparent differences in the financial and technical qualifications of Frontier as compared to Verizon.

Frontier is a much smaller company than Verizon and it has less experience operating fiber-to-the-home (FTTH) systems. It has no significant experience operating cable television services over an FTTH system. Staff was also concerned that Frontier was primarily a rural telephone service provider and the bulk of the Verizon purchase was of rural telephone systems that did not offer cable television services. This created the potential risk that Frontier's corporate attention and expertise would be directed at maintaining and expanding its telecommunications business rather than maintaining and improving the small number of former Verizon systems offering cable television services Frontier was purchasing.

The core questions that emerged were whether Frontier would have a long term commitment to provide cable television service in the City because of its limited experience, and whether it would choose to exercise the early termination right (walk away provision) that had been included in the Franchise Agreement at Verizon's strong insistence under a specific business context. Section 12.8 of the Franchise Agreement provides a one-time right for the Franchisee to terminate the 10 year Franchise agreement early without penalty, during a 90 day window which opens after the end of the first three years of the franchise (i.e., on November 1, 2011). This right may only be exercised by the Franchisee during the 90 day window if it "does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System." (Section 12.8). This type of early termination right is unusual in the cable industry but was a standard condition negotiated by Verizon in many its cable franchises because it was unsure of the ultimate success of its nationally launched FiOS TV

service. Staff was concerned that Frontier might seek to exercise the early termination right shortly after taking over the cable system based on very different commercial considerations.

Transfer of Control Agreement

Staff asked the companies to address these concerns by offering additional binding commitments in a written agreement. Staff has reached agreement with Verizon and Frontier on terms and conditions of the transfer of control which Staff now recommends to the City Council as adequately addressing the additional risks to the City. In summary, these terms and conditions are as follows:

- The Franchisee will establish and maintain a letter of credit in the amount of $40,000 throughout the term of the franchise. This letter of credit will secure the payment of franchise fees and any liquidated damages that may be assessed by the City under Section 12.4 of the Franchise Agreement for violations of the Franchise Agreement.
- If the above described letter of credit is not maintained by the Franchisee, or if the Franchisee's earnings before interest, taxes, depreciation and amortization (EBITDA) less capital expenditures in any fiscal year were to fall below $25 million, a full parental guarantee by Frontier will come into effect and remain in effect for the rest of the franchise term. In order to monitor the EBITDA level, the Chief Financial Officer of the Franchisee will certify compliance annually within 90 days of the close of the Franchisee's fiscal year end. This certification will be accompanied by supporting documentation.
- The potential exercise of the Franchisee's early termination right in Section 12.8 of the Franchise Agreement will be deferred. It will be exercisable for a 90 day window commencing on the later of March 31, 2013 or 2.5 years from the date of closing on the transfer of control.

These conditions have been incorporated into the Transfer Agreement. In addition to the above, the Transfer Agreement also provides for the following:

- The Franchisee will continue to be bound by the Franchise Agreement and be liable for any acts or omissions occurring prior to the closing of the transfer of control transaction.
- The incorporation of two "side letters" previously agreed to by the Franchisee, specifically, (a) Letter from Franchisee to City dated October 29, 2008 (Subject: City of Kirkland Cable Franchise – Expanded Basic Service, Aggregate Subscriber Counts and Intent to Carry TVW); and (b) Letter from Franchisee to City dated October 29, 2008 (Subject: City of Kirkland Cable Franchise – Cooperation in Technology Innovations).

Finally, the Franchisee has provided a separate written commitment to pay the City's out-of-pocket costs incurred in connection with review of the transfer applications, including attorneys' fees, in an amount not to exceed $50,000. The Franchisee has agreed it will not claim this payment as an offset to its franchise fee obligations.

FISCAL IMPACTS

If the City enters into the Transfer Agreement in its present form, the City will receive $50,000 in cash, within 30 days of receipt by the companies of an invoice from the City detailing its out-of-pocket expenses incurred to review the Application. The Council has approved expenditures up to $57,000. We now anticipate total costs will exceed this ceiling and are currently estimated at $65,000, most of which the City has already paid.

If the City does not enter into the Transfer Agreement and instead denies the Application, or simply does not act on the Application, it will not receive this cost reimbursement from the Franchisee. It would also be at risk of bearing the costs of defending itself in litigation initiated by the companies to challenge a denial.

ALTERNATIVES

The City Council could choose to deny the Application. However, as a matter of caution, this would likely lead to prolonged and costly litigation with the companies, with no guarantee of a favorable result for the City.

The City Council could also choose to not act on the Application before the agreed date of December 31, 2009. In this situation, the companies would likely assert that they are entitled to consider their approval request to be "deemed granted" as of December 31, 2009 under federal cable law, 47 U.S.C. §537.

DISCUSSION

Anticipated Benefits of Approval

Staff believes that the Transfer Agreement is fair and will provide numerous protections to the City and its residents. These benefits include:

- Frontier has demonstrated its longer term commitment to serve residents of the City by agreeing to delay the availability of the 90 day early termination window by several additional years, as described above.
- The City will receive the added security of a $40,000 letter of credit from the Franchisee which will be available in case of non-payment or underpayment of franchise fees and to recover liquidated damages for franchise violations.
- As a further security of the Franchisee's performance, the parental guarantee by Frontier will be triggered in certain circumstances described above.
- Frontier has also demonstrated a willingness to abide by the additional commitments made by the Franchisee and Verizon in the side letters with the City.
- The City will receive reimbursement of $50,000 which will cover most of its out-of-pocket costs of reviewing the Application.

Staff believes that with the added protections gained in the Transfer Agreement, Frontier is sufficiently qualified to operate a cable system in the City, and therefore recommends that the Application should be approved.

Anticipated Closing Date

Should the City Council adopt the Resolution approving the Application, the actual closing of the transfer of control transaction will not take place until all requisite approvals are obtained by the companies. As mentioned earlier, the FCC and WUTC approvals are still pending. Other regulatory approvals are also pending. The companies have publicly represented that they anticipate being in a position to complete the closing and transfer the systems to Frontier during the second quarter of 2010. If for any reason the transfer of control does not close as anticipated, the transfer approval will become void, the provisions of the Transfer Agreement

will cease to apply, and the City and Verizon will return to the status quo ante. However, the City will not be obligated to return the $50,000 cost reimbursement.

Council Meeting: 12/15/2009
Agenda: Unfinished Business
Item #: 10. a.

RESOLUTION R-4792

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE TRANSFER OF CONTROL OF THE CABLE FRANCHISEE VERIZON NORTHWEST, INC. TO FRONTIER COMMUNICATIONS CORPORATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE A TRANSFER OF CONTROL AGREEMENT.

WHEREAS, Verizon Northwest, Inc. ("Franchisee") currently provides cable services in the City of Kirkland pursuant to a cable Franchise Agreement with the City effective as of November 1, 2008 ("Franchise Agreement") and is currently a wholly owned subsidiary of Verizon Communications, Inc. ("Verizon"); and

WHEREAS, Section 10 of the Franchise Agreement provides that the prior consent of the City is required for a "Transfer of the Franchise" which includes any transaction in which ownership in the Franchisee is transferred, directly or indirectly from one person or group to another person or group so that control of the Franchisee is transferred; and

WHEREAS, on June 1, 2009, Verizon submitted to the City a formal application including an FCC Form 394 and other documents ("Application") seeking the City's consent to the proposed transfer of control of the Franchisee to Frontier Communications Corporation ("Frontier") ("Proposed Transaction"); and

WHEREAS, City staff has reviewed the Application, as well as additional information provided by Verizon and Frontier in response to City staff's requests; and

WHEREAS, City staff has reached a proposed agreement with the Franchisee and Frontier on terms and conditions under which the City would be willing to consent to the Transaction; and

WHEREAS, the proposed terms and conditions are set out in the Transfer of Control Agreement; and

WHEREAS, the Franchisee has agreed in writing to reimburse the City's out-of-pocket transfer review costs up to $50,000; and

WHEREAS City staff believes that the proposed terms and conditions contained in the Transfer Agreement are reasonable, fair and assure the City and its residents of continued full performance of the franchise by the Franchisee after the Transaction.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council hereby approves the transfer of control of the Franchisee, Verizon Northwest Inc., from Verizon Communications, Inc. to Frontier Communications Corporation, subject

to the acceptance and execution of the Transfer of Control Agreement within 60 days of the date of this Resolution.

Section 2. The City Manager is hereby authorized and directed to execute on behalf of the City a Transfer of Control Agreement substantially similar to the Agreement attached hereto as Exhibit A.

Section 3. The parties to the Transfer of Control Agreement shall file with the City a fully executed Transfer of Control Agreement within 60 days of passage of this resolution.

Section 4. The failure, refusal or neglect by the Franchisee or, Verizon, or Frontier to comply with Section 3 above shall constitute an abandonment of the rights conferred hereby, and the request for approval of the Transaction shall be deemed denied without further action by the City.

Section 5. If closure of the Transaction is reached on terms which substantially and materially alter the Franchisee's or Frontier's ability to perform the terms of the Transfer Agreement, then the request for approval shall be deemed denied without further action by the City.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

TRANSFER OF CONTROL AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 20___, by and between:

a) The City of Kirkland, a Washington municipal corporation ("City");

b) Verizon Northwest Inc., a Washington corporation and wholly owned subsidiary of Verizon Communications Inc. ("Franchisee") and;

c) Frontier Communications Corporation, a Delaware corporation ("Frontier").

Frontier, and Franchisee, as that term is defined herein, may be referred to collectively herein as "Companies".

RECITALS

WHEREAS, Franchisee currently holds a cable franchise (the "Franchise") from the City subject to the **Cable Franchise Agreement effective as of November 1, 2008** ("Franchise Agreement"); and

WHEREAS, Franchisee and the City have executed (a) Letter from Franchisee to City dated October 29, 2008 (Subject: City of Kirkland Cable Franchise – Expanded Basic Service, Aggregate Subscriber Counts and Intent to Carry TVW) and (b) Letter from Franchisee to City dated October 29, 2008 (Subject: City of Kirkland Cable Franchise – Cooperation in Technology Innovations) (collectively the "Side Letters"). The Side Letters are attached hereto as Exhibit A;

WHEREAS, Franchisee owns a cable system serving most of the geographic areas of the City ("System"); and

WHEREAS, pursuant to a Distribution Agreement by and between Verizon Communications Inc. ("Verizon") and Spinco dated as of May 13, 2009, as amended ("Distribution Agreement"), Verizon: (i) will contribute the stock of Franchisee to New Communications ILEC Holdings Inc. ("ILEC Holdings"), an indirect wholly owned subsidiary

of Verizon; (ii) will contribute the stock of ILEC Holdings to Spinco; and (iii) will distribute the stock of Spinco to Verizon's shareholders, which will continue to indirectly control Franchisee ("Proposed Distribution Transaction"); and

WHEREAS, pursuant to an Agreement and Plan of Merger by and among Verizon, Spinco and Frontier dated as of May 13, 2009, as amended ("Merger Agreement"), immediately after the Proposed Distribution Transaction, Spinco will merge into Frontier and thereby Frontier will acquire from Verizon control of the Franchisee as its indirect wholly owned subsidiary ("Proposed Merger Transaction"); and

WHEREAS, the Companies have represented to the City that the Proposed Distribution Transaction and the Proposed Merger Transaction will occur contemporaneously; and

WHEREAS, Section 10.1 of the Franchise Agreement provides that the prior consent of the City is required for the transfer of control of the Franchisee as contemplated as part of the Proposed Merger Transaction, provided that such consent shall not be unreasonably withheld, delayed or conditioned; and

WHEREAS, on June 1, 2009, as required under federal law and FCC regulations, Verizon and Frontier filed an FCC Form 394 with the City and requested that the City consent to the transfer of control resulting from the Proposed Merger Transaction (the "Transfer Application"); and

WHEREAS, the Franchisee, as that term is defined herein, has agreed to continue to comply with the Franchise Agreement, the Side Letters, and applicable law from and after the completion of the Proposed Merger Transaction; and

WHEREAS, relying on the Companies' representations referred to above, the City is willing to grant its consent to the transfer of control contemplated in the Proposed Merger Transaction, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration for the City's consent to the transfer of control contemplated in the Proposed Merger Transaction and subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

1. DEFINITION

1.1. For purposes of this Agreement, "Franchisee" shall mean the Washington corporation currently known as Verizon Northwest Inc. which may be renamed by Frontier on or after the date of the closing of the Proposed Merger Transaction.

1.2. Terms contained herein and not defined shall have the same definitions as contained in the Franchise Agreement.

2. TRANSFER OF CONTROL OF FRANCHISE

2.1. Pursuant to Section 10.4 of the Franchise Agreement, and by resolution dated December 15, 2009, (the "Transfer Resolution") the City has consented through the Transfer Resolution to the transfer of control contemplated in the Proposed Merger Transaction as specified in the Transfer Application, in consideration of the terms of this Agreement and conditioned on the acceptance and execution of this Agreement by the Companies.

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS

3.1. From and after the closing of the Proposed Merger Transaction, Franchisee accepts, acknowledges, and agrees that, after the Proposed Merger Transaction, it will continue to be bound by all the commitments, duties, and obligations,

present, continuing and future, of the Franchisee embodied in the Franchise Agreement and this Agreement, and that the Proposed Merger Transaction will not materially alter these obligations, except as expressly stated herein. Except as expressly set forth herein, nothing in this Agreement shall be construed to increase or expand the rights of the City with respect to the Franchise, or Franchisee's provision of cable service pursuant to the terms of the Franchise Agreement. Except as expressly set forth herein, nothing in this Agreement shall be construed to increase or expand the rights of the Franchisee with respect to Franchisee's provision of cable service pursuant to the terms of the Franchise Agreement. Nothing in this Agreement shall be construed to constitute an amendment to the Franchise Agreement, or to amend, alter or modify the Distribution Agreement or the Merger Agreement.

3.2. The Companies agree that neither the Proposed Merger Transaction nor the City's consent to the transfer of control contemplated in the Proposed Merger Transaction shall in any respect relieve the Franchisee or any of its successors in interest of responsibility for past acts or omissions, known or unknown with respect to provision of cable service pursuant to the Franchise Agreement. From and after closing of the Proposed Merger Transaction, Franchisee agrees that it shall be liable for any such acts and omissions, known and unknown, including liability for any and all previously accrued but unfulfilled obligations to the City under the Franchise Agreement and applicable law, for all purposes. Franchisee agrees that all acts and omissions of Franchisee occurring prior to closing of the Proposed Merger Transaction will continue to be deemed to be those of

Franchisee. The Proposed Merger Transaction shall not restrict or expand the rights of the Franchisee under or related to the Franchise Agreement as compared to those that could have been exercised by the Franchisee prior to the Proposed Merger Transaction.

3.3. From and after the closing of the Proposed Merger Transaction, Frontier and Franchisee shall ensure that all records pertaining to the Franchise and the Franchisee's performance under the Franchise shall continue to be available after the Proposed Merger Transaction in the same way and to the same extent such information was available prior to the Proposed Merger Transaction, consistent with the terms of the Franchise Agreement.

3.4. In addition to the current obligations of the Franchise Agreement, including the obligations contained in Section 12.7 of that Agreement, Franchisee shall, not later than sixty (60) days after the closing of the Proposed Merger Transaction, provide to the City an irrevocable letter of credit (in a commercially reasonable form reasonably acceptable to the Kirkland City Attorney) in the amount of forty Thousand Dollars ($40,000), to secure the payment of franchise fees and any liquidated damages that may be assessed by the City pursuant to the Franchise Agreement. Franchisee shall promptly restore any amounts drawn on the letter of credit and shall maintain the full amount of the letter of credit until the termination of the Franchise Agreement.

3.5. Frontier Communications Corporation shall enter into the Conditional Guaranty Agreement attached hereto as Exhibit B.

4. RESERVATION OF RIGHTS

4.1. To the extent not expressly waived herein, the Companies reserve all rights under Federal, State and Local Law, and the Franchise Agreement.

4.2. The City reserves all rights not expressly granted in this Agreement, including without limitation those specified below.

4.3. The City waives none of its rights with respect to the Franchisee's compliance with the requirements set forth in the Franchise Agreement. At no time will the Companies contend, either directly or indirectly, that the City is barred, by reason of the Proposed Merger Transaction, from considering, or raising claims based on, any defaults of Franchisee, or any failure by Franchisee to comply with the terms and conditions of the Franchise Agreement or with applicable law. The City's consent to the Proposed Merger Transaction shall in no way be deemed a representation by the City that the Franchisee is in compliance with all of its obligations under the Franchise Agreement.

4.4. Neither this Agreement, nor any other action or omission by the City at or before the execution of this Agreement, shall be construed to grant the City's consent to any future transfer of the Franchise, and/or any future change in ownership and/or control of the Franchise, or to mean that the City's consent to any future transaction is not required.

4.5. Any consent given by the City to the Proposed Merger Transaction is made without prejudice to, or waiver of, the City's right to investigate and take into account any lawful considerations during any future franchise renewal or transfer process.

4.6. This Agreement does not affect and shall not be construed to affect the rights under any lawful authority of the City to regulate or authorize, by ordinance, license or otherwise, use of the public rights-of-way for purposes other than for cable service, as that term is defined in the Franchise Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1. Each of the Companies hereby represents and warrants that at the time of the execution of this Agreement: (a) it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Franchise Agreement and, assuming due execution hereof by the other parties hereto, this Agreement constitute legal, valid and binding obligations of each Company that is a party to such agreements, enforceable in accordance with their respective terms; and (c) the execution and delivery of, and performance by such Company under this Agreement and the Franchise Agreement and the Side Letters, where applicable, are within such Company's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate action on the part of such Company and are not in contravention of such Company's, charter, bylaws, and/or other organizational documents.

5.2. From and after closing of the Proposed Merger Transaction, Franchisee represents and warrants that the Proposed Merger Transaction will not adversely affect the Franchisee’s ability to meet the requirements of the current Franchise Agreement and the Side Letters.

5.3. From and after closing of the Proposed Merger Transaction, Franchisee represents and warrants that after the Proposed Merger Transaction, Franchisee's financial qualifications will be such as shall enable them to maintain and operate the cable system in the City in accordance with the Franchise Agreement and applicable law.

5.4. From and after closing of the Proposed Merger Transaction, Franchisee represents and warrants that the Proposed Merger Transaction will not reduce the quality of existing system maintenance or repair.

6. ADDITIONAL CONDITION

6.1. Effective as of the closing of the Propose Merger Transaction, Frontier and Franchisee agree that the initial date on which Franchisee may exercise its right in Section 12.8 of the Franchise Agreement is hereby postponed from the end of the three-year period following the Service Date to the later of: (a) 2 ½ years after the closing of the Proposed Merger Transaction; or (b) March 31, 2013.

7. BREACHES

7.1. Any breach of this Agreement subsequent to the closing of the Proposed Merger Transaction shall be separately enforceable from the Franchise Agreement but shall be deemed a breach of the Franchise Agreement and shall be subject to the applicable enforcement provisions of the Franchise Agreement, in addition to any other remedies the parties may have under this Agreement at law or equity.

8. MISCELLANEOUS PROVISIONS

8.1. **Effective Date**: This Agreement shall be effective and binding upon the signatories once it is fully executed, and shall continue in force for the duration of

the Franchise Agreement, provided that, this Agreement shall terminate if the Merger Agreement is terminated pursuant to Article IX of the Merger Agreement.

8.2. **Binding Acceptance**: This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported assignment of this Agreement is void without the express written consent of the signatories.

8.3. **Voluntary Agreement**: This Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Agreement. Neither any of the Companies, nor any of their affiliates, nor the City, will take any action to challenge any provision of this Agreement; nor will they participate with any other person or entity in any such challenge.

8.4. **Severability**: If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

8.5. **Counterparts**: This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

8.6. **No Waiver**: No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the

waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

8.7. **Captions and References**: The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

AGREED TO THIS _____ DAY OF _____, 20___.

CITY OF KIRKLAND,
a municipal corporation of Washington

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

VERIZON NORTHWEST INC.

_____
By:
Title:

Dated:_____

FRONTIER COMMUNICATIONS CORPORATION

_____
By:
Title:

Dated:_____

EXHIBIT A

Verizon Northwest Inc.
1800 41st. St. MC: WA0104OS
Everett, WA 98201

October 29, 2008

Mr. David Ramsay
City Manager
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

Subject: City of Kirkland Verizon Cable Franchise – Cooperation in Technology Innovations

Dear Mr. Ramsay:

Verizon Northwest Inc. ("Verizon") and the City of Kirkland ("City") desire in the future to explore possible ways in which advancements in technology relating to Verizon's Cable System (including PEG functionality) might mutually benefit both the City and its residents, as well as Verizon. Thus, during the term of the Cable Franchise Agreement effective as of November 1, 2008, at the request of either party, Verizon and the City agree to make good faith efforts to meet and discuss such matters periodically as circumstances warrant. Both Verizon and the City understand that such discussions may include a variety of possible scenarios, and that nothing shall require either party to proceed with any scenario. This letter does not create any binding legal obligations by either party but is an expression of the intent and expectations of the parties that they will make good faith efforts to meet as discussed above.

Sincerely,

VERIZON NORTHWEST INC.

By: _____
Tim McCallion, President

CITY OF KIRKLAND

By: _____
David Ramsay, City Manager

EXHIBIT A

Verizon Northwest Inc.
1800 41st. St. MC: WA0104OS
Everett, WA 98201

October 29, 2008

Mr. David Ramsay
City Manager
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

Subject: City of Kirkland Verizon Cable Franchise – Expanded Basic Service, Aggregate Subscriber Counts, and Intent to Carry TVW

Dear Mr. Ramsay:

Subject to the terms and conditions contained within the Cable Franchise Agreement between the City of Kirkland (the "City") and Verizon Northwest Inc. ("Verizon"), dated October 29, 2008, Verizon agrees that it will provide, at no cost, expanded basic Cable Service to the City's two Emergency Operations Centers, which are currently located where listed below, and provide three set top boxes capable of receiving expanded basic service, two of which will be located at City Hall and one at Fire Station 26.

City Hall	Fire Station 26
123 Fifth Avenue	9930 124th Avenue NE
Kirkland, WA 98033	Kirkland, WA 98033

In addition, upon request but with at least thirty (30) days notice, Verizon will provide Franchisee's aggregate FiOS TV customer Subscriber count in the City subject to the confidentiality provisions of Section 8.1 of the Agreement. Aggregate Subscriber numbers shall be as of the end of the prior calendar year and shall be available forty-five (45) days after the end of the prior calendar year.

Furthermore, Verizon acknowledges that the City Council is interested in making state government programming available to its residents. Verizon intends to carry the state government channel (known as TVW) once it is added to its channel line up and agrees to provide 30 days notice to the City before it ceases to carry such programming if such change is within Verizon's control.

VERIZON NORTHWEST INC.

By: _____
Tim McCallion, President

CITY OF KIRKLAND

By: _____
David Ramsay, City Manager

Exhibit B

CONDITIONAL GUARANTY AGREEMENT

THIS AGREEMENT is made this day of _____, 2010, between the Jurisdiction and the Guarantor. For the purpose of this Agreement, the terms "Jurisdiction", "Guarantor" and "Franchisee" have the meanings given in this Agreement below:

WITNESSETH

WHEREAS, the City of Kirkland, Washington (the "Jurisdiction") has negotiated a cable franchise agreement (the "Franchise") with Verizon Northwest Inc. (the "Franchisee"), to operate and maintain a cable television system (the "Cable System"); and,

WHEREAS, Frontier Communications Corporation (the "Guarantor") has proposed to become the ultimate parent company of the Franchisee, and has filed a formal written request seeking approval of the proposed transfer by the Jurisdiction as required by federal law (FCC Form 394); and,

WHEREAS, the Jurisdiction has submitted Requests for Information to the Guarantor and the Franchisee in performance of their review of the Franchisee's legal, financial and technical qualifications to perform its obligations under the Franchise following the proposed transfer, and the Guarantor and the Franchisee have responded to the Jurisdiction's Requests by providing additional information; and

WHEREAS, in response to requests by the Jurisdiction following its review, the Guarantor has agreed to provide this conditional guaranty in order to induce the Jurisdiction to approve the transfer of control of the Franchise and the Franchisee from Verizon Communications Inc. to Frontier Communications Corporation;

NOW, THEREFORE, in consideration of the foregoing, the Guarantor agrees:

1. If either (1) the Franchisee's EBITDA (defined as operating income plus depreciation and amortization) less Capital Expenditures (as defined in accordance with U.S. generally accepted accounting principles (or such other standards which the Securities and Exchange Commission from time to time requires public companies to follow)) falls below $25,000,000 at the end of any fiscal year (it being understood that the calculation of EBITDA, less Capital Expenditures, will be certified under oath annually by Franchisee's Chief Financial Officer in a certificate delivered within 90 days of the fiscal year-end, and which shall include a schedule showing the calculation and shall also have attached financial statements of the Franchisee prepared in accordance with U.S. generally accepted accounting principles (or such other standards which the Securities and Exchange Commission from time to time requires public companies to follow), and including a statement of operations, balance sheet, and

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a statement of cash flows , but not including Management Discussion and Analysis or other notes, which have been audited or reviewed by Franchisee's independent certified public accountants, or which have been certified by the Chief Financial Officer of the Franchisee based on company books and records); however, if audited or reviewed financial statements are readily available for the Franchisee and provided as agreed herein, such statements shall include the audit or review, the audited or reviewed financial statements, and all explanatory materials as have been prepared, but otherwise such explanatory materials need not be provided; or (2) if the Irrevocable Letter of Credit provided by the Franchisee in connection with this transfer of control from Verizon Communications Inc. to Frontier Communications Corporation is not satisfactorily maintained throughout the Franchise term, subject to a grace period of 30 days to restore a Letter of Credit that has expired or otherwise terminated, in the agreed upon amount of $40,000, then Guarantor shall irrevocably comply with paragraphs 2 through 4 below for the remainder of the Franchise term. Otherwise, paragraphs 2 through 4 below shall not be of any effect.

In addition to the annual financial statements provided to the Jurisdiction in accordance with this paragraph, Franchisee will provide contemporaneous written notice to the Jurisdiction of any transactions defined in Franchise Section 10.2 as being exempt from formal review by the Jurisdiction as a transfer of the Franchise under federal law. Franchisee will also annually provide the Jurisdiction with a copy of the public versions of the annual reports that it files with the state utility regulatory agencies in Oregon and Washington.

2. The Guarantor hereby unconditionally guarantees the timely and full performance of any and all obligations of Franchisee contained in the Franchise. In the event Franchisee for any reason fails to perform those obligations, the Guarantor agrees to perform or cause to be performed those obligations on Franchisee’s behalf immediately upon written demand by the Jurisdiction.

3. This guaranty is an absolute, continuing, and unlimited performance guaranty of the Franchise by the Franchisee. The Jurisdiction shall not be obliged to proceed first against the Franchisee or any other person, firm or corporation.

4. The Guarantor waives notice of acceptance of this guaranty and further waives protest, presentment, demand for performance or notice of default to the Guarantor, except the written notice required in paragraph 2 above. The Jurisdiction has no duty beyond the required written notice in paragraph 2 above to advise the Guarantor of any information known to it regarding Franchisee’s performance of its Franchise obligations. This waiver, however, shall not be deemed a waiver of any requirement of the Franchise as to notice to the Franchisee.

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5. The Jurisdiction's failure to require strict performance of the Franchise shall not release the Guarantor from liability under this Agreement.

6. This Agreement, unless terminated, substituted or canceled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise. This Agreement and the guaranty made hereunder are contingent upon and subject to the closing of the transaction by which control of the Franchisee is transferred to the Guarantor. If control of the Franchisee is subsequently transferred away from the Guarantor with the approval of the Jurisdiction, the guaranty shall terminate at that time.

7. The Guarantor may propose substitution of another Guarantor to perform the obligations of this Agreement. If the Jurisdiction finds the proposed substitute Guarantor reasonably satisfactory, another Guaranty Agreement may be substituted upon mutual agreement of the Jurisdiction and the Guarantor. Such substitution shall not affect liability incurred or accrued under this agreement prior to the effective date of such substitution. Following the Jurisdiction's acceptance of the substitute Guarantor, no claim, suit or action under this Agreement by reason of any default of the Franchisee shall be brought against the original Guarantor unless asserted or commenced within one year after the effective date of such substitution of the Agreement, and only to the extent it relates to a liability incurred or accrued prior to the effective date of the substitution.

8. Any notices given pursuant to this agreement shall be in writing and delivered personally to the following addresses or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Guarantor at: Senior Vice President and General Counsel, Frontier Communications Corporation, 3 High Ridge Park, Stamford, Connecticut 06905, and to the Jurisdiction at: Multimedia Communications Manager, City Hall, 123 5th Avenue, Kirkland, WA 98033-6189. Either party may change its address for notices by giving notice of the new address in the manner provided in this paragraph.

9. Definitions: For purposes of this Agreement, the following terms are defined as indicated below:

   (A) Franchisee: Verizon Northwest Inc., or its lawful successors;
   (B) Guarantor: Frontier Communications Corporation;
   (C) Franchise: Cable Franchise Agreement granted by the Jurisdiction to Franchisee, including any conditions of grant, renewal or transfer.

IN WITNESS WHEREOF, the Jurisdiction and Guarantor have entered into this Agreement on the day of _____, 2010.

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Guarantor: Frontier Communications Corporation
By: _____
Title: _____

State of _____)
) ss.
County of_____)

This Agreement was acknowledged before me on the day of _____, 2010, by _____, as a duly authorized officer of Frontier Communications Corporation.

Notary Public for: _____

My Commission Expires: _____

Jurisdiction: City of Kirkland, Washington
By: _____
Title: _____

State of _____)
) ss.
County of_____)

This Agreement was acknowledged before me on the day of _____, 2010, by _____, as a duly authorized representative of the City of Kirkland.

Notary Public for: _____

My Commission Expires: _____