



August 1, 2006

To: Metropolitan Policy Committee  
From: Milo Mecham  
Subject: Item 4. Response to Comcast Request for Agreement on Submission to Arbitration

**Action Recommended:** Motion to decline request for agreement to submit to arbitration

### **Discussion**

On February 9, 2006 the MPC adopted Resolution 2006-2, notifying Comcast that the time for exercising the special renewal procedures of Section 16(2)(f) of the franchise had ended without Comcast successfully starting the process. By a letter of July 10, 2006, Comcast informs the MPC that it strongly disagrees with the MPC action. Comcast is seeking to invoke the provisions of Section 15(4) of the franchise by asking the MPC to consent to submit the matter to binding arbitration.

Staff believes that it was an error for Comcast to make this request of the MPC. Section 15(4) apparently reserves the power of agreeing to arbitration to the Grantors of the franchise - Lane County and the cities of Eugene and Springfield.

### ***MPC authority as franchise administrator***

Section 4 of the franchise provides:

The Commission shall represent the Grantor in administration of the franchise, and advise the Grantor in accordance with the agreement between Lane County, City of Eugene and City of Springfield. \* \* \* The form, organization, and powers of the commission shall be determined jointly by Lane County, City of Eugene, and City of Springfield, but the commission shall have at least those powers referred to in this ordinance. Grantee may rely upon notices and communications from the commission. In the event that the Grantee receives contrary or contradictory communications from the commission and the Grantor, Grantee in its sole discretion may either rely upon the communications from the commission, or seek a declaratory judgment or other appropriate relief from a court of competent jurisdiction. \* \* \*

Through the rest of the franchise, the franchise directs the Commission to do certain things, and in other places it calls upon the Grantor to act. In some places, such as in Section 16 (2)(b) it states “A limited review of the franchise may be initiated by the Grantee, the Grantor or the commission \* \* \*”

In Section 15(4), the provision that allows for binding arbitration only if both sides agree, the franchise does not mention the Commission at all. It states that “[u]pon agreement of Grantee and Grantor, any controversy or dispute may be submitted for arbitration \* \* \* .”

Under other circumstances, a delegation of authority to “represent” the franchise authority in administration of the franchise might include being able to agree to dispute resolution. In this franchise the language of the franchise suggests that the franchise authorities (Grantors) had a view of what was included in franchise administration, and they specifically excluded the Commission from authorizing a decision to agree to arbitration about most disputes concerning the franchise.

Interpretation of the franchise is almost certainly one of the franchise administration powers given to the MPC, so the question of how to respond to Comcast’s request for arbitration is up to the Commission.

***Question on the merits: No consent to arbitration***

If the MPC disagrees with the staff’s reading of the franchise, then there is the question of whether the MPC would want to agree with Comcast’s request to submit the question of how to start franchise renewal under Section 16(2)(f) to arbitration.

Here also staff recommends that the MPC not accept Comcast’s interpretation, or agree to Comcast’s request. Before the MPC’s February resolution and very much after then, staff for the franchise authorities have tried to discuss the substance of renewing the franchise with Comcast. Comcast’s lack of response to these overtures has suggested that, instead of actually wanting to discuss franchise renewal, Comcast wants to win an argument about the process of starting to talk about renewal. Even if the MPC has the authority to decide about an arbitration request under Section 15, it seems better for everyone if the parties actually start franchise renewal discussions rather than enter into an extended fight about the process.

**Staff Recommendation**

Staff recommends the MPC adopt a motion declining the request to agree to arbitration.

**Attachments:** Attachment 1 – July 10 letter from Comcast  
Attachment 2 – July 31 letter from Milo Mecham