



July 31, 2006

Robert Schroeter
Government Affairs Manager
Comcast Cable
2897 Chad Drive
Eugene, OR 97408

Dear Mr. Schroeter:

I am in receipt of your July 10, 2006, letter requesting that the MPC agree to submit the question of franchise renewal pursuant to section 16(2)(f) to arbitration. I will present the request to the MPC at the August 10, 2006 meeting. You should know, however, that I will be informing the MPC that I do not believe it is within their authority to agree to the request for arbitration. Section 15 of the franchise, which deals with dispute resolution, gives authority to the Grantor and the Grantee to deal with dispute resolution, including arbitration. The Commission is not mentioned in any way, and Section 4 of the franchise grants MPC only the power to represent the Grantor in administration of the franchise, not to exercise Grantor's rights.

As you know the MPC is a policy making body composed of elected and appointed representatives from several governments in the region. Its responsibilities include some of the administrative tasks associated with the cable communications system franchises granted by Eugene, Lane County and Springfield. The MPC meets once a month. As a public body subject to Oregon public meetings law, the agenda of the MPC must be set sufficiently in advance so that there is adequate notice of its actions. To comply, the MPC has set procedures that require the agenda be completed at least a week in advance of the MPC's meeting. Your request for agreement with regard to arbitration arrived too late to be placed before the MPC until the August 10, 2006, MPC meeting.

Pending a decision by the MPC, however, there are several statements in your July 10, 2006 letter that need attention. I think that it is best to begin with the language of Section 16(2)(f) Anytime between May 1, 2005 and October 31, 2005, upon reasonable demonstration by Grantee to commission that Grantee is in substantial compliance with the material terms of the franchise as it then exists, the commission shall renew the franchise for an additional ten year term commencing July 1, 2008. A denial of renewal by the commission shall be made if it reasonably initially determines that the Grantee has not substantially complied with the material terms of the franchise. In the event of such a denial, the commission shall also immediately proceed under Section 626 of the Federal Act. If the commission conducts the hearing required in subpart 626(c)(2) of the Federal Act, a decision by the commission to

deny the renewal or *[sic]* Grantee's proposal shall be the final decision of the franchising authority.

In your July 10, 2006 letter, you state that "[b]y letter notification on October 21, 2005, delivered to each of the jurisdictions and to the MPC, Comcast indicated that it was exercising its rights as contained in Section 16(2)(f) of each of the respective franchises."

A review of the October 21, 2005 letter reveals that your present characterization of the October letter does not match the language of the letter. In the October 21, 2005 letter you ask "[p]lease accept this letter as Comcast's notification of intention to utilize the extension provisions contained in Section 16(2)(f)." Section 16(2)(f) creates a six month period, ending on October 31, 2005, for the MPC to evaluate Comcast's franchise performance, to make a discretionary determination concerning the demonstration of compliance, and then to act to renew or deny renewal of the franchise. There is no mention of "franchise extension" because Section 16(2)(f) is not an extension process, it is a customized application of the franchise renewal process provided for in Section 626 of the Federal Act.

In the October 21, 2005, letter you state that it is Comcast's "belief based upon a thorough review of the franchises and associated materials that Comcast is in compliance with the material terms of each franchise. . . ." You state: "[f]or your convenience, we have enclosed a chart indicating all terms of the respective franchise agreements that impose responsibilities upon the Grantee and Comcast's compliance with the same." As the staff pointed out in subsequent discussions, "a chart indicating . . . Comcast's compliance . . ." was not the demonstration of compliance required by Section 16(2)(f). The chart indicating compliance was itself problematic, since it omitted discussion of certain franchise terms about which the local franchise authorities had provided prior written notice of non-compliance to Comcast.

At its November 2005 meeting, the MPC resolved to suspend its concerns about how Comcast chose to attempt to initiate the Section 16(2)(f) renewal process, and directed staff to meet with Comcast to try to craft a process whereby the commission might be able to fulfill its responsibilities under Section 16(2)(f). There followed an extensive round of meetings, telephone conversations, letters and emails between Comcast and staff for the MPC and the local franchise authorities. These discussions focused almost exclusively on the process for implementing Section 16(2)(f). At one point during the meetings you indicated that Comcast was nearing completion of filling "two boxes" of materials documenting compliance with the franchise, but nothing has ever been received. Throughout the discussions, the most difficult problem was Comcast's insistence that the process could only be an extension of the current franchise with no room for discussion of how to resolve questions about franchise compliance. When staff sought to bring the MPC into the process to resolve the procedural questions so that we could focus on substantive matters, Comcast objected to the proposed MPC actions.

After months of trying to get the process started, while still waiting for the first item of evidence documenting compliance with any provision of the franchise, the MPC decided that there was no point in trying to keep the potential of eventual Section 16(2)(f) discussions alive. While it may not have been the resolution that Comcast wanted, Comcast was informed of the

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pending decision. Comcast was present at the meeting where the decision was taken. Comcast had notice of the discussion and resolution before the meeting, and was heard on the subject at the MPC meeting.

I think that the MPC's choice to treat Comcast's actions as a failure of initiation rather than looking at the question of compliance with Section 16(2)(f) shows a desire for meaningful discussion with Comcast about franchise renewal, rather than a desire to end to the renewal process. Therefore, I think that it is within my scope of authority to remind Comcast that the language of Section 16(2)(f) is intended to create an abbreviated franchise renewal process within the general confines of the Section 626 process. The federal act allows for the Section 626 process to take up to three years, but it need not be so. In December 2005 Comcast appropriately initiated the regular 626 process. Since that time, staff for the local franchise authorities have made several attempts to move forward with franchise renewal, including making proposals that, if accepted, could have had everyone well on the way toward completion of the franchise renewal process under Section 626. This included one jurisdiction proposing a complete franchise, ready for adoption if Comcast wished to do so. All of these efforts have been met with complete silence from Comcast. If we share a goal of quick franchise renewal, would it not be better to actually discuss the substance of franchise renewal rather than go back to a discussion about the process of how to start a discussion about renewal?

As indicated, after consulting with the local franchise authorities, I will bring Comcast's request for arbitration before the MPC on August 10, 2006.

Sincerely,



Milo Mecham

Cc: Pam Berrian
Len Goodwin
Michael McKenzie-Bahr