

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Oct 9, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Assignment of franchise from Comcast Corporation to Midwest Cable, Inc.

Exact Wording for the Agenda:

Resolution consenting to the assignment of franchise and the transfer of control of franchisee from Comcast Corporation to Midwest Cable, Inc.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

[Empty box for providing details on why the action is required, why it is recommended, what council action will provide, allow and accomplish, and any other helpful information.]

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head:  _____

Date: 10-1-14

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, ALABAMA, CONSENTING SUBJECT TO CONDITIONS, BUT OTHERWISE DENYING CONSENT, TO THE TRANSFER OF CONTROL OF FRANCHISEE FROM COMCAST CORPORATION TO MIDWEST CABLE, INC.

WHEREAS, on or about January 11, 2001, the City of Huntsville ("City") and Comcast Cablevision of Huntsville, Inc. ("CCH"), a wholly-owned subsidiary of Comcast Corporation ("Comcast"), entered into a certain Franchise Agreement effective as of January 11, 2001, as may have been amended from time to time ("Franchise Agreement"), which granted to CCH the nonexclusive, revocable right, privilege, and obligation to construct, operate, maintain, upgrade, repair, and remove, a cable television system, within the Franchise Area; and

WHEREAS, thereafter, through various intracorporate assignments and transactions, CCH's rights and obligations under the Franchise Agreement were ultimately assigned to Comcast of Alabama, LLC ("Franchisee"), which is also wholly-owned by Comcast; and

WHEREAS, the Franchise Agreement was for an initial term of ten years, but pursuant to Section 1.2 of the Franchise Agreement was thereafter extended until January 11, 2013; and

WHEREAS, Section 6.4 of the Franchise Agreement provides that if the Franchisee continues to operate its system after that date, which Franchisee has, the Franchisee shall continue to abide by and comply with the terms of the Franchise Agreement until its franchise is renewed or lawfully not renewed; and

WHEREAS, Section 8.1 of the Franchise Agreement provides, among other things, that the neither the Franchise Agreement, nor any rights or obligations of the Franchisee in the System or pursuant to the Franchise, nor any part of the capacity of the System, may be encumbered, assigned, sold, transferred, pledged, leased, or sublet, in whole or in part, to any Person, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any Person, without the prior written consent of the City; and

WHEREAS, Section 8.2 of the Franchise Agreement provides, among other things, that no change in Control of the Franchisee or the System shall occur without the prior written consent of the City, except for solely intracorporate reorganizations to the extent such transaction does not involve a change in the management, day-to-day operations, or financial condition of the Franchisee; and

WHEREAS, on April 25, 2014, Comcast, the parent company of Franchisee, and Charter Communications, Inc. ("Charter"), entered into the Comcast/Charter Transaction Agreement ("Transaction Agreement"), pursuant to which Franchisee will become a wholly-owned subsidiary of Midwest Cable, Inc. ("Midwest Cable"), which will initially be owned approximately two-thirds by Comcast shareholders and one-third by

Charter, but which will be managed by Charter (collectively, the "Transaction"); and

WHEREAS, after consummation of the Transaction, Franchisee will be doing business under the name of GreatLand Communications but will remain the same legal entity; and

WHEREAS, by letter to the Mayor dated June 17, 2014, Comcast and Midwest Cable requested the City's determination of whether the City's consent is required for the Transaction to proceed and enclosed an Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise ("Application"); and

WHEREAS, a transfer of Control of the Franchisee would occur as a result of the Transaction (the "Transfer"), and therefore, pursuant to Subsections 8.1 and 8.2 of the Franchise Agreement, the City's consent to the Transaction is required; and

WHEREAS, 47 U.S.C. § 537 and 47 C.F.R. § 76.502 provide that a request for consent to assignment or transfer of a cable franchise will be deemed granted if the franchising authority does not render a final decision within 120 days of the filing of a complete application for consent, unless the requesting party and the franchising authority agree to an extension of time; and

WHEREAS, the City has reviewed the Application and other relevant materials and has determined that consent to the Transaction would not serve the public convenience, safety and general welfare, and that therefore consent to the Transfer should be denied, unless Midwest Cable and the Franchisee agree to certain terms and conditions that are necessary to protect the rights of the City and to serve the public convenience, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, ALABAMA, THAT:

SECTION 1. The Council hereby consents to the Transfer, subject to the following conditions:

(a) The Transaction shall be consummated no later than Tuesday, June 30, 2015, and on the terms and conditions set forth in this Resolution and, to the extent not inconsistent with this Resolution, the Application.

(b) Consummation of the Transaction shall have no effect on, and Franchisee shall continue to be responsible for, all of its past, current, and future obligations and liabilities under the Franchise Agreement, including those obligations and liabilities both known and unknown, and regardless whether those obligations and liabilities arose before or after the date of this Resolution or the date of consummation of the Transaction.

(c) Upon consummation of the Transaction, Midwest Cable shall comply, or cause Franchisee to comply, fully with the terms and conditions of the Franchise Agreement.

(d) Consummation of the Transaction shall not relieve, and Midwest Cable and Franchisee waive any claim that it would relieve, Franchisee of any past, current, or future obligations and liabilities of the Franchisee under the Franchise Agreement, including those obligations and liabilities both known and unknown, and regardless whether those obligations and liabilities arose before or after the date of this Resolution or the date of consummation of the Transaction.

(e) After consummation of the Transaction, and except to the extent expressly permitted by Section 8.2 of the Franchise Agreement, neither the Franchisee's system nor the rights and privileges granted by the Franchise Agreement shall be assigned or transferred, in whole or in part, to Midwest Cable or to any Midwest Cable subsidiary or affiliate other than the Franchisee without filing a written application to the City and obtaining the Council's prior written consent to such assignment or transfer.

(f) On or before October 15, 2014, Midwest Cable shall file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit A, executed by Midwest Cable and certified and sworn to as the legally binding act of Midwest Cable.

(g) On or before October 15, 2014, the Franchisee shall file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit B, executed by Franchisee and certified and sworn to as the legally binding act of Franchisee.

SECTION 2. If any of the conditions specified in Section 1 hereof are not satisfied, then the Council's consent to the Transaction is denied as of October 15, 2014, with no further action by the Council.

SECTION 3. If, on or before October 15, 2014, Midwest Cable does not file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit A or Franchisee does not file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit B, as specified in Subsections 1(f) and (g), then the Application shall be denied as of the date of this Resolution with no further action from the Council.

SECTION 4. Any material misrepresentation in the Application shall constitute a material violation of the Franchise Agreement by Franchisee and shall be subject to all of the remedies available to the City under the Franchise Agreement and applicable law.

SECTION 5. Upon the filing of the Acceptances set forth in Subsections 1(f) and (g), any violation of this Resolution thereafter by Midwest Cable or the Franchisee shall constitute a material violation of the Franchise Agreement and shall be subject to all of the remedies available to the City under the Franchise Agreement and applicable law.

SECTION 6. This Resolution shall not be construed to grant or imply the Council's consent to any other transfer or transaction that may require the City's consent under the Franchise Agreement or applicable federal, state or City law. The City reserves all of its rights with regard to any such future transactions.

SECTION 7. The Council's consent to the Transaction shall not constitute a waiver or release of any of the City's rights under the Franchise Agreement or applicable federal, state or City law, or of any claims the City may have against the Franchisee or any of its successors or assigns, regardless of whether such rights or claims arose before or after the date of this Resolution or the date of consummation of the Transaction.

SECTION 8. No condition listed herein shall serve as a limit on any additional payments or other liabilities or obligations that Comcast, Franchisee, or Midwest Cable may owe the City, regardless whether such liabilities, obligations, or rights to payments arose before or after the date of this Resolution or the date of consummation of the Transaction.

SECTION 9. This Resolution is a final decision on the Application within the meaning of 47 U.S.C. § 537, and for these purposes the Application is deemed acted upon on the date that this Resolution is adopted by the Council.

SECTION 10. Any capitalized words defined in the Franchise Agreement, but not defined in this Resolution, shall have the meaning given to them in the Franchise Agreement.

ADOPTED this the 9th day of October, 2014.

President of the City Council
of the City of Huntsville, Alabama

APPROVED this the 9th day of October, 2014.

Mayor of the City of Huntsville,
Alabama

EXHIBIT A

ACCEPTANCE OF THE FRANCHISE TRANSFER RESOLUTION
BY MIDWEST CABLE, INC.

Midwest Cable, Inc., a _____ corporation ("Midwest Cable"), hereby (1) agrees that, upon consummation of the Transaction, it will cause Franchisee to abide by the terms and conditions of the Franchise Agreement by and between the City of Huntsville, Alabama, and Comcast Cablevision of Huntsville, Inc., dated as of January 11, 2001, as amended ("Franchise Agreement"); and (2) agrees that it will abide by and accept the terms and conditions in Resolution No. _____, a Resolution of the City Council of the City of Huntsville, Alabama, Consenting Subject to Conditions, But Otherwise Denying Consent, to the Transfer of Control of the Franchisee from Comcast Corporation to Midwest Cable, Inc., adopted October ____, 2014 ("Franchise Transfer Resolution").

Midwest Cable warrants and represents that this Acceptance of the Franchise Transfer Resolution is executed by a person lawfully authorized to act on its behalf and that this Acceptance of the Franchise Transfer Resolution is a legally binding obligation of Midwest Cable.

MIDWEST CABLE, INC.
A _____ CORPORATION

BY: _____

NAME: _____

TITLE: _____

DATE: _____

STATE OF _____ :

COUNTY OF _____ :

I HEREBY CERTIFY that on this _____ day of _____ 2014, before me, the subscriber, a Notary Public of the State of _____, in and for _____, aforesaid, personally appeared _____ of Midwest Cable, Inc., and acknowledged the foregoing Acceptance of the Franchise Transfer Resolution, in _____, to be the act and deed of Midwest Cable, Inc.

As WITNESS my hand and Notary Seal.

Notary Public
State of _____
My Commission Expires _____

[Seal]

EXHIBIT B

ACCEPTANCE OF THE FRANCHISE TRANSFER RESOLUTION BY COMCAST OF ALABAMA, LLC

Comcast of Alabama, LLC, a _____ limited liability company ("Comcast Alabama"), hereby (1) agrees that it will abide by the terms and conditions of the Franchise Agreement by and between the City of Huntsville, Alabama, and Comcast Cablevision of Huntsville, Inc., dated as of January 11, 2001, as amended ("Franchise Agreement"); and (2) agrees that it will abide by and accept the terms and conditions in Resolution No. _____, a Resolution of the City Council of the City of Huntsville, Alabama, Consenting Subject to Conditions, But Otherwise Denying Consent, to the Transfer of Control of the Franchisee from Comcast Corporation to Midwest Cable, Inc., adopted October ____, 2014 ("Franchise Transfer Resolution").

Comcast Alabama warrants and represents that this Acceptance of the Franchise Transfer Resolution is executed by a person lawfully authorized to act on its behalf and that this Acceptance of the Franchise Transfer Resolution is a legally binding obligation of Comcast Alabama.

COMCAST OF ALABAMA, LLC
A _____ LIMITED LIABILITY
COMPANY

BY: _____

NAME: _____

TITLE: _____

DATE: _____

STATE OF _____ :

COUNTY OF _____ :

I HEREBY CERTIFY that on this _____ day of _____ 2014, before me, the subscriber, a Notary Public of the State of _____, in and for _____, aforesaid, personally appeared _____ of Comcast of Alabama, LLC, and acknowledged the foregoing Acceptance of the Franchise Transfer Resolution, in _____, to be the act and deed of Comcast of Alabama, LLC.

As WITNESS my hand and Notary Seal.

Notary Public
State of _____
My Commission Expires _____

[Seal]