



MEMORANDUM

TC

Agenda Item No. 1(F)7

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: May 15, 2003

FROM: Steve Shiver
County Manager

SUBJECT: Substitute Resolution approving the renewal of the Non-Exclusive Cable Licenses of Comcast of South Florida I, Inc., Comcast of South Dade, Inc., and Comcast of South Florida II, Inc.

This substitute differs from the original in that, in addition to the three licenses being renewed: (1) the license terms of Comcast of Miami, Inc. (City of Miami), and Comcast of California/Colorado/Florida/Oregon, Inc. (City of Opa Locka) are extended to coincide with the other license expiration dates; and (2) the upgrade schedule is adjusted for completion no later than March 31, 2005, and includes the Opa Locka and Aventura systems.

Comcast and the County are not in agreement regarding the terms of their renewals. Comcast requested a single master license consolidating all licenses into one while retaining their six corporations. Language could not be agreed to that clearly delineated the responsible parties under the license. However, in an attempt to address some of Comcast's concerns, several changes were made to the cable ordinance to place a cap on performance bonds and application fees where licensees are commonly owned.

Comcast seeks automatic renewal of their licenses in 2007 for an additional 10-year period with a mid-term review no sooner than 2013. The proposed mid-term review contains a multi-step process culminating in Comcast's right to reject the County's findings. This proposal was rejected by staff for various reasons, including: 1) the Board's policy of having all cable licenses expire simultaneously in 2007 to enable a holistic review of cable; 2) none of the other cable systems have been provided automatic renewal; and 3) neither the time period requested nor the limitations placed on the County were deemed reasonable in light of community needs, changing technology, and the Board's authority.

Comcast has indicated an intent to upgrade their systems to the 750 MHz level required by the proposed cable ordinance, not the 550 MHz they originally proposed. To the extent possible, staff attempted to adjust the upgrade boundaries and schedules to those submitted by Comcast, though not in every detail.

Should Comcast fail to accept the renewal resolution within 30 days, renewal of the licenses is preliminarily denied. In accordance with Federal law, Comcast's failure to accept the renewal resolution will trigger a multiple step renewal process that will commence with the requirement that Comcast submit a proposal in the form of a resolution to the County that meets the community related needs outlined in Chapter 8AA and this resolution.

RECOMMENDATION

It is recommended that the Board approve the attached resolution which conditionally approves the renewal of the non-exclusive cable television licenses of Comcast of South Florida I, Inc. ("Comcast West"), Comcast of South Dade, Inc. ("Comcast Kendall"), and Comcast of South Florida II, Inc. ("Comcast North") for a period beginning June 6, 2003, June 20, 2003, and July

18, 2003, respectively, through October 17, 2007. The expiration date coincides with the last license expiration of existing cable licenses so that in the future all licenses will expire and be subject to renewal simultaneously per the Miami-Dade County Code. The resolution requires system upgrades to be completed in Comcast North and Comcast Kendall by June 29, 2005.

BACKGROUND

In 1984, Congress adopted the Cable Communications Policy Act, which redefined some of the relationships existing between local governments and their cable operators. A key provision of the Cable Act establishes procedural guidelines and time frames to be followed for the renewal of cable licenses. The procedure includes a review of the past performance of the cable operator and an assessment of the future cable related needs and interests of the community.

A community needs assessment was conducted by staff which consisted of conducting an industry workshop, holding nine (9) public meetings in Comcast's license areas, reviewing corporate information provided by Comcast, conducting consumer surveys, and reviewing thousands of telephone calls and complaints taken from cable subscribers. As a result of staff's review of the above, Miami-Dade cable consumers have commented that they want (1) access to advanced cable services; (2) a reduction in telephone hold and busy times; (3) credit and reduction in outages; (4) additional programming choices; and (5) increased consumer protection standards.

Prior to the AT&T/Comcast merger, and in conjunction with the TCI to AT&T cable license transfers in 1999, AT&T made various commitments to the County. AT&T indicated to the Board that it would invest \$360 million dollars in system upgrades and create 140 new jobs over the following thirty-six (36) months. AT&T's commitments were made in the context of various Board discussions but were not incorporated into the resolution approving the transfers. When the CSD inquired as to the status of these commitments at the time of the subsequent AT&T/Comcast merger, AT&T indicated that the statements only represented AT&T's plans and goals and did not represent binding commitments. AT&T reported that they had invested \$160 million in Miami-Dade in the 36-month time period, created approximately 20 new internal jobs related to construction, and added more than 500 new subcontractors. The majority of the construction took place in the City of Miami. The City of Miami is currently operating at 750 MHz.

Comcast does not currently provide a consistent level of service in all of its license areas. Cable subscribers of Comcast of South Dade, Inc. (Comcast Kendall) and Comcast of South Florida II, Inc. (Comcast North) systems have indicated that services they receive are below service levels received in other areas of the County. All non-Comcast cable providers in Miami-Dade County currently provide a minimum of 750 MHz. While Comcast has indicated that they have future corporate plans for the delivery of cable and other services, Comcast has not provided specifics as to how they are going to proceed. Therefore, the attached resolution outlines an upgrade schedule and requires Comcast to upgrade the Kendall and North cable systems to 750 MHz. Within the Comcast North system, the resolution requires the Carol City area to be upgraded first because it has fewer services available when compared to other areas of the County. Carol City must be completed by June 29, 2004, and the remainder of the North system must be completed by June 29, 2005. The upgrade of the Kendall area must also be completed by June 29, 2004. These upgrades will allow Comcast to provide advanced services like high definition television and high-speed data.

Comcast of South Florida I, Inc. (Comcast West) system is already upgraded and meets the County's proposed technical standards.

Comcast objects to the minimum technical standards being proposed in the amendments to the Cable TV ordinance being considered simultaneously by this Board. The proposed ordinance requires cable operators to construct at a minimum capacity of 750 MHz. This MHz capacity is necessary to provide services that will meet the present and future service needs of the community. Comcast asserts that an upgrade to a capacity 550 MHz, less than the 750MHz used by Adelphia, Charter, and Comcast West, will deliver adequate service levels.

Consumer Services Department (CSD) staff disagrees. If Comcast upgrades to 550 MHz, instead of 750 MHz, customers subscribing to the most basic level of cable service (analog) will be negatively impacted because the number of channels available to analog customers will have to be reduced to add channels for digital customers due to the limitation in system capacity. This recently occurred in Northeast Miami-Dade during a previous upgrade of a Comcast license.

Comcast also objects to the timeframes and penalties being proposed. CSD believes that the upgrade schedule is reasonable considering the age of the existing equipment of the Comcast North and Kendall systems, which in some areas are greater than ten (10) years old. In 2002, Comcast completed an upgrade of its cable system in the City of Miami to 750 MHz under a 24-month schedule imposed by the City. CSD recommends a penalty of one thousand (\$1,000) dollars per day for each day Comcast fails to meet the construction schedules. These penalties are similar to those imposed by the City of Miami during its recent cable system upgrade.

CSD has reviewed the past performance of Comcast and has determined that it is currently in compliance with its license obligations. Comcast has previously been cited for failure to meet the County's telephone performance standards, however, Comcast has since corrected this failure and is currently meeting the standards. Staff completed a review of Comcast's legal, technical, financial, and character qualifications to operate a cable system and determined that they meet the criteria set forth under federal and local laws.

Comcast of South Florida I, Inc., (Comcast West) currently serves approximately 83,000 subscribers in Sweetwater, Miami Springs, Miami Lakes, Virginia Gardens, Medley, Hialeah, Hialeah Gardens, West Miami, Coral Gables, and Unincorporated Miami-Dade County. Comcast of South Florida II, Inc., (Comcast North) currently serves approximately 75,000 subscribers in Aventura, Biscayne Park, El Portal, Miami Lakes, Miami Shores, North Miami, North Miami Beach, and Unincorporated Miami-Dade County. Comcast of South Dade, Inc., (Comcast Kendall) currently serves approximately 55,000 subscribers in Pinecrest and Unincorporated Miami-Dade County.

This resolution approving the renewals is conditioned upon Comcast's written acceptance within 30 days, as required by Section 8AA-9 of the Code.

Attachments



MEMORANDUM

(Revised)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: May 6, 2003

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor

Substitute

Veto _____

Agenda Item No.

Override _____

RESOLUTION NO. _____

RESOLUTION CONDITIONALLY GRANTING COMCAST OF SOUTH FLORIDA I, INC., COMCAST OF SOUTH DADE, INC., AND COMCAST OF SOUTH FLORIDA II, INC. RENEWAL OF NON-EXCLUSIVE CABLE LICENSES; GRANTING COMCAST OF SOUTH FLORIDA I, INC., COMCAST OF SOUTH DADE, INC., AND COMCAST OF SOUTH FLORIDA II, INC. NON-EXCLUSIVE LICENSE AREAS; GRANTING CERTAIN RIGHTS AND PRIVILEGES WITHIN SAID AREAS TO COMCAST OF SOUTH FLORIDA I, INC., COMCAST OF SOUTH DADE, INC., AND COMCAST OF SOUTH FLORIDA II, INC.; PROVIDING FOR TERMS AND CONDITIONS OF THE LICENSE RENEWALS; EXTENDING THE LICENSE TERMS OF COMCAST OF MIAMI, INC., AND COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC.; AND PROVIDING FOR FUTURE CONSIDERATIONS BY THE COUNTY COMMISSION

WHEREAS, on September 15, 1992, by Resolutions No. R-988-92, R-987-92, and R-990-92, the Board granted Dynamic Cablevision of Florida, Inc., Dade Cable Television, Inc., and Storer Cable Communications, Inc. renewal of non-exclusive cable television licenses for a period of ten (10) years; and

WHEREAS, on July 11, 1995, Resolution No. R-973-95 conditionally approved the transfer of control of the cable license of Dynamic Cablevision of Florida, Inc. from The Providence Journal Company to Continental Cablevision, Inc.; and

WHEREAS, on October 8, 1996, Resolution No. R-1153-96 conditionally approved the transfer of control of the cable license of Dynamic Cablevision of Florida, Inc. from Continental Cablevision, Inc. to U.S. West, Inc.; and

WHEREAS, on January 14, 1997, by Resolution Numbers R-30-97 and R-31-97, the Board conditionally approved the license renewals of Miami Tele-Communications, Inc. and TCI Cablevision of Florida, Inc.; and

WHEREAS, on October 7, 1997, by Resolution Number R-1169-97, the Board granted Comcast Cablevision of Hallandale, Inc., a non-exclusive cable television license and priority service area; and

WHEREAS, on March 18, 1999, Resolution No. R-281-99, conditionally approved the transfer of control of the four (4) cable licenses from Telecommunications, Inc. to AT&T Corporation; and

WHEREAS, on November 2, 1999, Resolution No. R-1178-99 conditionally approved the transfer of control of the cable license of MediaOne of South Florida, Inc. to AT&T Corporation; and

WHEREAS, on June 6, 2002, by Resolution No. R-622-02, the Board approved the transfer of control of six (6) non-exclusive licenses of AT&T Corporation to AT&T Comcast Corporation (hereafter known as "Comcast"); and

WHEREAS, the license of Comcast of South Florida I, Inc., expires on June 6, 2003, the license for Comcast of South Dade, Inc., expires on June 20, 2003; the license for Comcast of South Florida II, Inc., expires on July 18, 2003, the license for Comcast of Miami, Inc., expires on January 19, 2007, the license for Comcast of California/Colorado/Florida/Oregon, Inc., expires on June 1, 2007, and the license of Community Cable Television, expires on October 17, 2007; and

WHEREAS, Miami-Dade County has reviewed the past performance of Comcast and has identified the future cable related needs and interest of the community; and

WHEREAS, Miami-Dade County and Comcast Corporation discussed terms and conditions that meet the needs and interests of the community, which terms and conditions, known as the "Miami-Dade County Cable Ordinance" shall govern the renewal licenses and shall be included in the Code of Miami-Dade County;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that**

Section 1. Comcast of South Florida I, Inc. is hereby granted renewal of its non-exclusive cable license for a period beginning June 6, 2003, and ending October 17, 2007. The non-exclusive license area of Comcast of South Florida I, Inc. shall have the same unincorporated areas and incorporated areas of Miami-Dade County as described in Resolution No. R-988-92, which is attached and incorporated by reference. The terms and conditions of the license are set forth in the "Miami-Dade County Cable Ordinance," Chapter 8AA, Article I, Miami-Dade County Code, as amended.

Section 2. Comcast of South Dade, Inc. is hereby granted renewal of its non-exclusive cable license for a period beginning June 20, 2003, and ending October 17, 2007. The non-exclusive license area shall have the same unincorporated areas and incorporated areas of Miami-Dade County as described in Resolution R-987-92, which is attached and incorporated by reference, and the incorporated areas of Pinecrest and Palmetto Bay. The terms and conditions of the license are set forth in the "Miami-Dade County Cable Ordinance," Chapter 8AA, Article I, Miami-Dade County Code, as amended.

Section 3. Comcast of South Florida II, Inc. is hereby granted renewal of its non-exclusive cable license for a period beginning July 18, 2003, and ending October 17, 2007. The non-exclusive license area shall have the same unincorporated areas and incorporated areas of Miami-Dade County as described in Resolution R-990-92, which is attached and incorporated by reference, and the incorporated areas of Aventura and Miami Lakes. The terms and conditions of the license are set forth in the "Miami-Dade County Cable Ordinance," Chapter 8AA, Article I, Miami-Dade County Code, as amended.

Section 4. The non-exclusive license of Comcast of Miami, Inc., formerly Miami Telecommunications, Inc., pursuant to Resolution R-30-97, is hereby extended from January 19, 2007, until October 17, 2007.

Section 5. The non-exclusive license of Comcast of California/Colorado/Florida/Oregon, Inc., formerly TCI Cablevision of Florida, Inc., pursuant to Resolution R-31-97, is hereby extended from June 1, 2007, until October 17, 2007.

Section 6. Comcast shall have the right and privilege to install and operate cable systems within the above described license areas providing that Comcast complies with the Miami-Dade County Cable Ordinance, all other applicable provisions of the Code of Miami-Dade County, and all rules and regulations adopted pursuant to the provisions of the Code.

Section 7. Comcast shall upgrade its systems to provide consistent and comparable levels of service, including State-of-the-Art technology as defined in the Code of Miami-Dade County Section 8AA-2, throughout the following license areas pursuant to the following schedules:

A. Comcast of South Florida II, Inc.

Comcast shall complete the upgrade of the following area no later than May 30, 2004, and prior to commencing the upgrade of the other areas of the Comcast of South Florida II, Inc. license as generally described herein: That area bounded on the north by the Miami-Dade/Broward line; on the west by I-75; on the south by S.R. 916 (Gratigny Road Expressway); and on the east by U.S. 441.

B. Comcast of South Florida II, Inc.

Comcast shall complete the upgrade of the following area no later than December 30, 2004, as generally described herein: That area bounded on the north by the Miami-Dade/Broward line; on the east by the Intracoastal Waterway; on the south by a line beginning at the City Limits of the City of Miami, running west along the City Limits to N.E and N.W. 79 Street, running west along 79 Street to the City Limits of the City of Hialeah, running north and west along the City Limits to S.R. 916 (Gratigny Parkway), running west on along Gratigny Parkway and Graham Dairy Road (approximately N.W. 138 Street) and ending at U.S. 27.

C. Community Cable Television.

Comcast shall complete the upgrade of the following area no later than July 31, 2004, as generally described herein: The City of Aventura.

D. Comcast of California/Colorado/Florida/Oregon, Inc.

Comcast shall complete the upgrade of the following area no later than July 31, 2004, as generally described herein: The City of Opa Locka.

E. Comcast of South Dade, Inc.

Comcast shall complete the upgrade of the following area no later than March 31, 2005, as generally described herein: That area bounded on the north by S.W. 8 Street (Tamiami Trail); on the west by S.W. 177 Avenue (Krome Avenue); on the south by S.W. 216 Street; on the east by a line beginning at S.W. 8 Street and S.W. 67 Avenue (Ludlam Road), (excluding the City of South Miami) continuing south to S.W. 88 Street (Kendall Drive), running east to the City limits of Coral Gables, running south along the City

Limits to the Intracoastal Waterway, south along the Intracoastal Waterway to S.W. 216 Street (Hainlin Mill Drive).

- F. Comcast shall meet monthly with Miami-Dade County staff and provide the County with a monthly report detailing the progress of its construction commencing June 30, 2003.

Section 8. Notwithstanding the requirements of Section 8AA-38 of the Miami-Dade County Code, at the completion of the above-stated upgrades, Comcast will be able to offer a fully harmonized channel lineup to its customers throughout the County, except for municipally-required access channels and leased access. Nothing herein shall prohibit Comcast from testing or test-marketing new technologies or services in selected areas of its licenses.

Section 9. Nothing contained herein shall in any way preclude the County Commission from taking any actions in accordance with the power, authority, and jurisdiction provided the Commission as prescribed within the Code of Miami-Dade County, Florida, including but not limited to granting new licenses, amending existing licenses, and/or repealing existing licenses.

Section 10. These Licenses are contingent upon Comcast's compliance with 8AA-9 including a written acceptance of these licenses within thirty (30) calendar days of this resolution.

Section 11. In the event that the Licensees fail to provide written acceptance in accordance with 8AA-9, Licensees' informal request for the renewal of their licenses identified in Section(s) 1, 2 and 3 shall be deemed to be denied. In the event that the Licensees elect to proceed under the formal provisions of the Federal Cable Act, the Licensees shall submit their proposal for renewal no later than 60 days from the date that this resolution becomes final. Such

proposal shall be put in a form that reflects the County's current method of granting cable licenses pursuant to an ordinance and a resolution. In addition, it shall reflect the Licensee's proposal to address the future cable-related needs of the County which the County preliminarily finds to be reflected in the terms and conditions provided for in Chapter 8AA of the Code of Miami Dade County, as amended, and the provisions of this resolution.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jimmy L. Morales
Dorrin D. Rolle
Katy Sorenson

Dr. Barbara Carey-Shuler
Betty T. Ferguson
Joe A. Martinez
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

Sen. Javier D. Souto

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 2003. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as TwL
to form and legal sufficiency. _____

By: _____
Deputy Clerk

Thomas W. Logue