

Memorandum



Date: May 8, 2007

Agenda Item No. 8(C)(1)(B)

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution approving the Non-exclusive Cable License of Hotwire Communications, LLC

This item was amended by the Economic Development and Human Services Committee at its April 11, 2007 meeting. Section 9 was added to the resolution in order to clarify that prior to operating in any incorporated area of Miami-Dade County, Hotwire Communications, LLC shall obtain a license from such incorporated area if such area requires a license to provide service.

RECOMMENDATION

It is recommended that the Board approve the attached resolution, which conditionally grants a Non-Exclusive Cable Television license to Hotwire Communications, LLC (Hotwire) with an expiration of October 17, 2013.

SCOPE

This proposed Non-Exclusive Cable Television license is countywide, affecting both unincorporated and incorporated areas of the County.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact to the County.

TRACK RECORD

Hotwire is currently a private cable television operator that provides video services on private property only. This is the initial application by Hotwire to obtain a Miami-Dade County license to provide cable television services by means of the County right-of-way. The Consumer Services Department will be responsible for monitoring the cable license.

BACKGROUND

On October 27, 2006, Hotwire, a wholly owned subsidiary of University City Housing Company, submitted an application for a non-exclusive cable television license in both unincorporated and incorporated Miami-Dade County. Michael Karp and Kristin Johnson are the major principals of Hotwire. The County routinely grants county-wide cable television licenses pursuant to changes to the Cable Television Ordinance in 1997, which eliminated the requirement for smaller service areas previously known as priority service areas. Section 8AA-7 of the Code provides that the County shall make a final determination on the application within eight (8) months of the date a completed application was received. The eight (8) month period expires on June 27, 2007.

Hotwire proposes to provide cable television services to multi-family projects and individual households in various areas of Miami-Dade County. Non-exclusive cable television licenses that cover various parts of Miami-Dade County are currently held by Comcast Communications, Atlantic Broadband, Strategic Technologies, Inc. and BellSouth Entertainment, Inc.

The procedural guidelines for the granting of cable television licenses are found in federal, state and local laws. Federal law includes a review to determine if the applicant for a license has the financial, technical, and legal qualifications to provide cable service, to assure that community needs are met and access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents within the proposed license area.

Under state law, the County must also consider the economic impact upon private property, the public need for a license and the impact on the public rights-of-way to its existing users. In the case of any overlapping license for cable service, the County cannot grant a license more favorable or less burdensome than those for other cable television operators in Miami-Dade County. However, additional terms and conditions may be placed on an applicant if the County deems appropriate. Miami-Dade County Code also requires the review of the financial, technical and legal qualifications of the company and other information, such as the adherence to consumer protection standards which could materially affect the granting of a non-exclusive license.

Hotwire currently provides private cable television service to three (3) multi-unit communities and has contracts to provide service to three (3) other multi-unit communities being developed. A County cable television license is not required to provide service to those communities since Hotwire has not had to use the public right-of-way to provide those services. In addition to the services provided within Miami-Dade County, Hotwire provides similar private cable television services to subscribers in Pennsylvania, New Jersey, New York, South Carolina and other jurisdictions in Florida. In addition to Miami-Dade County, Hotwire has submitted cable television license applications to the Florida municipalities of Miami and North Port.

The Consumer Services Department (CSD) requested comments from municipalities who have residents that are receiving or are proposed to receive cable services from Hotwire, existing cable operators and the public regarding the proposed license application. The City of Miami and Atlantic Broadband were the only entities that provided comments. The City of Miami commented that Hotwire submitted a cable television license application to the City that is incomplete and listed the information that must be provided by Hotwire. In addition to County approval, Hotwire must obtain license approvals, as required by applicable municipal law, in any municipality in which it intends to operate.

Atlantic Broadband expressed concern that Hotwire's application is a "plan to improve its profits on large condominium deals in prime neighborhoods". The County Code does not contain a requirement that a company build its system everywhere, but Section 8AA-63(a)(1) of the Code prohibits and contains measures to address the illegal practice of redlining. Section 8AA-27(2) requires that cable operators file a report with the County every two (2) years demonstrating that they have refrained from redlining. Failure to file the report is a violation of Code, and may result in penalties, including, but not limited to, termination of the license.

Atlantic Broadband also expressed that Hotwire's application does not meet the County's requirements for license applications. Staff has carefully reviewed the application and has determined that the application meets the requirements of federal, state and County laws and that the public will benefit from additional competition. Approval of Hotwire's application will place Hotwire under the requirements of the County's Cable Ordinance to include its consumer protection provisions, will require them to provide the County's three (3) public access channels, and obligates them to contribute to the County's capital fund to support the three (3) access channels.

Comcast expressed concern to the County over a temporary aerial cable in the City of Aventura that was improperly installed by a Hotwire subcontractor. CSD staff met with Hotwire and the subcontractor at the location of concern and the aerial cable was immediately removed. Hotwire has advised the County that they will no longer be using that subcontractor.

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and Members, Board of County Commissioners
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This resolution approving the non-exclusive cable license is conditioned upon Hotwire's written acceptance within 30 days, as required by Section 8AA-9 of the Code. The recommended expiration date of October 17, 2013, complies with Section 8AA-8 of the Code that requires new licenses to expire simultaneously with existing licenses.

Attachments

A handwritten signature in black ink, appearing to read 'R. M. Carlton', is written over a horizontal line.

Roger M. Carlton
Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: May 8, 2007

FROM: Murray A. Greenberg
County Attorney

A handwritten signature in black ink, appearing to read "Murray A. Greenberg", is written over the printed name of the County Attorney.

SUBJECT: Agenda Item No. 8(C)(1)(B)

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

Agenda Item No. 8(C)(1)(B)

Veto _____

05-08-07

Override _____

RESOLUTION NO. _____

RESOLUTION CONDITIONALLY GRANTING HOTWIRE COMMUNICATIONS, LLC. A NON-EXCLUSIVE CABLE LICENSE AND LICENSE AREA; GRANTING CERTAIN RIGHTS AND PRIVILEGES WITHIN SAID AREA TO HOTWIRE COMMUNICATIONS, LLC.; PROVIDING FOR TERMS AND CONDITIONS FOR THE LICENSE; AND PROVIDING FOR FUTURE CONSIDERATIONS BY THE COUNTY COMMISSION

WHEREAS, it is the intent of Chapter 8AA of the Code of Miami-Dade County, Florida (hereafter referred as the "County") to promote the public health, safety, and general welfare by providing for the control of cable television systems in the unincorporated and incorporated areas of Miami-Dade County for the privilege of using the public rights-of-way for constructing and operating a cable system; and

WHEREAS, the County wishes to promote widespread availability of cable service to County residents and encourage the provision of diverse information to the community over cable; and

WHEREAS, Chapter 8AA of the Code of Miami-Dade County establishes standards for the regulation and performance of cable television systems in Miami-Dade County for all cable television licenses; and

WHEREAS, on October 27, 2006, Hotwire Communications, LLC submitted a completed application for a non-exclusive cable television license and license area; and

WHEREAS, the County has reviewed the application and issued public notice regarding the application to the general public, and having duly considered all comments and testimony, including the criteria of Section 166.046, Florida Statutes, as described in the attached memorandum of the County Manager; and

WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

Section 1. Hotwire Communications, LLC is hereby conditionally granted a non-exclusive cable license for a period beginning on the effective date of this resolution, and ending October 17, 2013. 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. Pursuant to the license referred to in Section 1, Hotwire Communications, LLC, is hereby granted a non-exclusive license for all unincorporated and incorporated areas of Miami-Dade County.

Section 3. Within thirty (30) days of the adoption of this resolution, Hotwire Communications, LLC shall provide the County with a construction schedule for the license area set forth in Section 2 immediately above. Hotwire Communications, LLC, shall construct its Cable system to provide consistent and comparable levels of service throughout the entire license

area, including State-of-the-Art technology as defined in Section 8AA-38 of the Code of Miami-Dade County.

Section 4. Hotwire Communications, LLC shall have the right and privilege to install and operate cable systems within the above described license area providing that Hotwire Communications, LLC 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 5. Hotwire Communications, LLC must notify the County of any Satellite Master Antenna Television (SMATV) system connected to cable system.

Section 6. Hotwire Communications, LLC by acceptance of this license, agrees to the following conditions:

Hotwire Communications, LLC agrees that it will cause to be provided to each prospective homebuyer of a home or residence, in a community owned or controlled by University City Housing Company ("UCH") or by any UCH subsidiary or affiliate ("UCH Community"), a disclosure document which clearly places the prospective homebuyer on notice that cable television services within the UCH Community are provided exclusively by Hotwire Communications, LLC an affiliate of UCH (the "Disclosure"). Receipt of the Disclosure shall be acknowledged by each prospective homebuyer through execution of a document acknowledging the Disclosure (the "Acknowledgment"). The Acknowledgment shall be executed by the prospective homebuyer prior to or simultaneously with

the execution of a Contract for Purchase and Sale of a home or residence in a UCH Development.

Section 7. 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 8. This License is contingent upon Hotwire Communications, LLC's compliance with 8AA-9 including a written acceptance of this license within thirty (30) calendar days of this resolution.

Section 9. Prior to operating in any incorporated area of Miami-Dade County, Hotwire Communications, LLC shall obtain a license from such incorporated area if such area requires a license to provide service.

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, Chairperson
Barbara J. Jordan, Vice-Chairperson

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of May. The 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

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. 

Oren Rosenthal