

ORDINANCE No. 184206

*Authorize change in control of the cable franchise held by Qwest Broadband Services, Inc to CenturyLink, Inc. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. CenturyLink, Inc ("CenturyLink") has agreed to acquire Qwest Communications International Inc. ("QCII") pursuant to an agreement between the parties dated April 21, 2010. Under the terms of the parties' merger agreement ("Transaction"), QCII will become a wholly-owned subsidiary of CenturyLink, subject to and contingent upon closing of the Transaction.
2. Qwest Broadband Services, Inc. ("Qwest BSI") presently owns and controls a cable franchise ("Qwest cable franchise") issued by the City of Portland ("City") pursuant to Ord. No. 181414, passed by the Council on November 14, 2007. Qwest BSI is a wholly owned subsidiary of Qwest Services Corporation, which is a wholly owned subsidiary of QCII. The Qwest cable franchise was duly accepted by Qwest BSI and became effective on and after January 13, 2008 for a term of six years.
3. Section 15.2 of the Qwest cable franchise prohibits a franchise transfer or change in control as that term is defined in the Franchise without the prior consent of the City of Portland expressed by ordinance. Section 15.3 of the Qwest cable franchise provides that the City of Portland may condition a transfer upon such terms and conditions related to the technical, legal, and financial qualifications of the prospective transferee to perform according to the terms of the franchise as the City deems appropriate.
4. Transfers of cable franchises are subject to the requirements of the Cable Communications Policy Act of 1992, and regulations promulgated by the Federal Communications Commission ("FCC"). CenturyLink and Qwest BSI filed an FCC Form 394, Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, which was received by the Mt. Hood Cable Regulatory Commission on July 27, 2010 ("Application").
5. The Mt. Hood Cable Regulatory Commission ("MHCRC") was created by an Intergovernmental Agreement dated December 24, 1992 (the "IGA") to carry out cable regulation and administration on behalf of the City of Portland and other MHCRC member jurisdictions. Among other things, the MHCRC acts in an advisory capacity to the City in connection with potential or proposed transfers or changes in ownership or control of any cable franchisee. As set forth in the IGA, the City has reserved full authority to act on its own behalf regarding any proposed change in ownership or control of a cable franchise. However, under the IGA the City has agreed to take no action in these areas until the

MHCRC has had an opportunity to give prior consideration and make a recommendation on the matter.

6. The information included in the Application provided by Qwest BSI (as Transferor) and CenturyLink (as Transferee) has been reviewed by MHCRC staff and discussed with representatives of both companies. Following the closing of the Transaction, Qwest BSI will remain an indirect subsidiary of QCII, which will become a wholly-owned, first-tier subsidiary of CenturyLink. MHCRC staff concluded, based on and in reliance on the information provided by Qwest BSI and CenturyLink, that the agreement by CenturyLink to acquire QCII should not adversely affect the capability of Qwest BSI to satisfy the requirements of the Qwest cable franchise.
7. The MHCRC held a public hearing and work session on September 20, 2010 to consider the views expressed by the public and interested parties, together with information received from Qwest BSI, CenturyLink, and MHCRC staff. Upon considering this information, the MHCRC has recommended that the City approve the proposed parent level change of control of the Qwest cable franchise to CenturyLink under certain conditions, including the following:
 - (a) Qwest BSI, as a subsidiary of CenturyLink, will comply with all requirements of the Franchise consistent with applicable federal and state law;
 - (b) Approval of the Application is expressly conditioned on closing of the Transaction. If for any reason the Transaction which is the subject of the request for consent to change in control is not finally consummated, or if the closure is reached on terms which are substantially and materially different to the terms identified in the FCC Form 394 and related information provided by the CenturyLink and Qwest BSI and relied upon by the MHCRC and the Jurisdictions, then CenturyLink and Qwest BSI shall provide written notice to the MHCRC providing a detailed description of what has occurred and the Application, as well as the conditions contained in this Ordinance shall be automatically rendered null and void.
8. Based upon the information submitted by the Transferee and the recommendation of the MHCRC, the City of Portland should consent to the requested change in control, with conditions.

NOW, THEREFORE, the Council directs:

- (a) Subject to the conditions set out in the form of acceptance attached as Exhibit A to this Ordinance, the Portland City Council approves the request by CenturyLink and Qwest Broadband Services, Inc. for a parent level change in control of the franchise granted to Qwest Broadband Services, Inc. by the City of Portland, Oregon, subject to and contingent upon closing of the Transaction

- (b) The Portland City Council's consent shall not be construed nor shall it be deemed to constitute any waiver or release of any legal rights and authority that the City of Portland may have under the Qwest cable franchise and any separate permits, franchises or written agreements with Qwest Communications International Inc. or any QCII subsidiaries.
- (c) Within 30 days after passage of this Ordinance, CenturyLink, and Qwest BSI shall file a written, executed acceptance of this Ordinance, meeting the approval of the City Attorney. The written acceptance shall be in the form attached hereto as Exhibit A. Transferee shall file such written acceptance with the Council Clerk, with a duplicate to be sent to the Office of Cable Communications and Franchise Management.
- (d) The executed acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Ordinance.
- (e) The failure, refusal or neglect by CenturyLink, QCII and Qwest BSI to file such written acceptance by such time shall constitute an abandonment and rejection of the rights and privileges conferred hereby, and this ordinance shall thereupon be null and void.
- (f) If for any reason the Merger and Transactions which are the subject of the request for consent to change in control are not finally consummated, or if the closure is reached on terms which are substantially and materially different to the terms identified in the FCC Forms 394 and subsequent information provided by CenturyLink and Qwest BSI and relied upon by the MHCRC and the City of Portland, the Transferee shall provide written notice to the MHCRC and the City of Portland providing a detailed description of what has occurred and the request for a change in control of the Qwest cable franchise shall then be null and void.

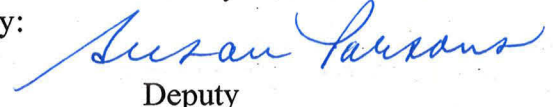
Section 2. The Council declares that an emergency exists because the public interest would benefit through consent of the transfer within federally imposed deadlines; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: NOV 03 2010

Commissioner Amanda Fritz
David C Olson and Mary Beth Henry
October 20, 2010

LaVonne Griffin-Valade
Auditor of the City of Portland

By:


Deputy

Agenda No.
ORDINANCE NO. 184206
 Title

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| INTRODUCED BY Commissioner/Auditor: Fritz | CLERK USE: DATE FILED OCT 29 2010 |
| COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz <i>Fritz</i> Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard | LaVonne Griffin-Valade Auditor of the City of Portland By: <i>[Signature]</i> Deputy |
| BUREAU APPROVAL Bureau: OCCFM Bureau Head: David Olson <i>[Signature]</i> Prepared by: Mary Beth Henry/Cj Date Prepared: 10/14/2010 Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/> Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input type="checkbox"/> Council Meeting Date November 3, 2010 | ACTION TAKEN: |
| City Attorney Approval <i>Benjamin Walters</i> | |

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| AGENDA TIME CERTAIN <input checked="" type="checkbox"/> Start time: 10:15 Total amount of time needed: 20 mins. (for presentation, testimony and discussion) |
| CONSENT <input type="checkbox"/> |
| REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion) |

| FOUR-FIFTHS AGENDA | COMMISSIONERS VOTED AS FOLLOWS: | | |
|--------------------|---------------------------------|------|------|
| | | YEAS | NAYS |
| 1. Fritz | 1. Fritz | ✓ | |
| 2. Fish | 2. Fish | ✓ | |
| 3. Saltzman | 3. Saltzman | ✓ | |
| 4. Leonard | 4. Leonard | ✓ | |
| Adams | Adams | ✓ | |