



Takoma Park City Council Meeting – July 20, 2016 Agenda Item 5

Voting Session

Resolution Authorizing the City Manager to Sign an Agreement with Montgomery County Regarding the RCN (Starpower) Cable Franchise Agreement

Recommended Council Action

Approve Resolution.

Context with Key Issues

The City Council recently authorized approval of revised agreements with Montgomery County regarding the Comcast and Verizon cable franchises. With the recent approval by Montgomery County of the non-exclusive cable franchise with Starpower (doing business as RCN) and the expected approval of the Takoma Park City Council of the same, an agreement with Montgomery County needs to be signed as well to provide for services on behalf of the City. The services would include the County administering the franchise (involving consumer advocacy and protection, corporate adherence to franchise agreement terms, and distribution of funds), and the City will receive one full-time standard definition digital video channel for governmental use and a high-definition digital video channel for governmental use to be shared by the City of Takoma Park, the Town of Chevy Chase, Chevy Chase Section 5 of the Village of Chevy Chase, the Village of Martin's Additions, the Village of North Chevy Chase, and the City of Rockville.

Because the City of Takoma Park has many more subscribers than the other municipalities involved in this agreement, we would likely provide the majority of the programming on the RCN high definition municipal channel.

As in the agreements with Montgomery County related to the Comcast and Verizon franchises, Montgomery County does not agree to negotiate future franchise agreements on behalf of the City of Takoma Park, although it is noted that the municipality finds that having the County do the negotiation is in its interest. Because the commitment to do so is not included in the agreement, but it is the understanding of the municipalities and of County staff that the County will take the lead on negotiations in the future, the resolutions note that the agreement is being signed with the understanding and expectation that the County will continue to negotiate franchise agreements on behalf of the municipalities.

Council Priority

A Financially Sustainable Government
Engaged, Responsive, Service-Oriented Government

Environmental Impact of Action

N/A

Fiscal Impact of Action

Approximately \$12,783 in PEG (Planning, Education and Government) operating revenue, plus savings in not having to add a staff position to oversee the terms of the franchise agreements, especially regarding customer service and protection.

Attachments and Links

- Draft Resolution Authorizing an Agreement with Montgomery County Concerning the Starpower Cable Franchise
- Draft Agreement with Montgomery County Concerning the Starpower Cable Franchise

Introduced by:

CITY OF TAKOMA PARK, MARYLAND

RESOLUTION #2016-XX

**AUTHORIZING APPROVAL OF AN AGREEMENT WITH MONTGOMERY COUNTY
CONCERNING THE STARPOWER CABLE FRANCHISE**

WHEREAS, pursuant to §5-204(d) of the Local Government Article, Annotated Code of Maryland, the City may grant a franchise for a cable television system; and

WHEREAS, Montgomery County, Maryland and the City granted a franchise for the operation of a cable communications system within the unincorporated portions of Montgomery County and the City upon the terms and conditions set forth in a certain Cable Franchise Agreement by and between Montgomery County, Maryland and Starpower Communications, LLC (doing business as RCN); and

WHEREAS, the City found that it is in the best interest of its residents that awarding or renewing a cable communications franchise and administration and regulation of the Starpower cable system, within the boundaries of the City, be undertaken by the County and to this end has enacted Section 17.04.010 of the City Code, which adopts, with certain amendments, Chapter 8A so that its provisions shall be effective within the City; and

WHEREAS, by the attached Agreement to Implement the Starpower Cable Franchise Between Montgomery County, Maryland and Participating Municipalities, the City and County replace the previous agreement between the two parties in its entirety and have set forth the terms and conditions upon which the County will administer and enforce the Municipality's Cable Communications Ordinance, if any, and implement Chapter 8A and the Starpower cable franchise, to include without limitation awarding or renewing a cable communications franchise; and

WHEREAS, the Council has determined that it is in the public interest to adopt the Agreement to Implement the Starpower Cable Franchise Between Montgomery County and Participating Municipalities to allow greater flexibility in the use of the PEG funds for operations in addition to capital costs; and

WHEREAS, the Council understands that the County Executive recognizes that negotiation of franchise agreements is part of the administration service for which Takoma Park and other municipalities pay 30% of the franchise fees pursuant to this Agreement and expects that this function will continue for the duration of this Agreement; and

WHEREAS, the County has agreed to reimburse the City for legal fees incurred in conjunction with the negotiation of the attached Agreement, up to \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Takoma Park, Maryland that the City Manager is authorized to sign the Agreement to Implement the Starpower Cable Franchise Between Montgomery County, Maryland and Participating Municipalities in substantially the form attached.

ADOPTED this _____ day of July, 2016.

AYE:

NAY:

ABSTAIN:

ABSENT:

**AGREEMENT TO IMPLEMENT THE STARPOWER CABLE FRANCHISE BETWEEN
MONTGOMERY COUNTY, MARYLAND**

and

**PARTICIPATING MUNICIPALITIES (Town of Chevy Chase/Chevy Chase Section
5/Martin’s Additions/Village of North Chevy Chase/Takoma Park)**

THIS AGREEMENT is entered into as of the ____ day of July, 2016, by and between Montgomery County, Maryland, a body corporate and politic (hereinafter referred to as the “County”), and _____, a municipal corporation organized pursuant to Article XI-E of the Maryland Constitution (hereinafter referred to as “the Municipality”) (collectively referred to as “the Parties”).

WITNESSETH:

WHEREAS, the County enacted Chapter 8A of the Montgomery County Code (2014), as amended, titled “Cable Communications,” which allows for the grant of one or more franchises for the construction and operation of a cable communications system in the County, and for the administration and regulation of the cable communications system by the County during the franchise term; and

WHEREAS, the County awarded a cable franchise to Starpower Communications, LLC (hereinafter referred to as “Starpower”) and approved Starpower’s cable franchise agreement, pursuant to the provisions of Chapter 8A; and

WHEREAS, the Municipality has the express authority to grant one or more exclusive or nonexclusive franchises for a cable television system within its corporate boundaries, pursuant to Section 1-708 of the Local Government Article; and

WHEREAS, the Municipality finds that it is in the best interest of its residents for cable systems to be constructed and operated within its corporate limits; and

WHEREAS, the Municipality finds that it is in the best interest of its residents that the awarding or renewing a cable communications franchise and administration and regulation of the Comcast cable system, within the boundaries of the Municipality, be undertaken by the County and to this end has either (i) enacted an Ordinance, which adopts, with certain amendments, Chapter 8A so that its provisions shall be effective within the Municipality, or (ii) not exempted itself by ordinance from Chapter 8A and therefore Chapter 8A applies in the Municipality pursuant to Section 4-111 of the Local Government Article; and

WHEREAS, the Municipality's Cable Communications Ordinance, if any, provides that the County is requested and authorized to administer and enforce said Ordinance within the Municipality; and

WHEREAS, by this Agreement, the Parties have set forth the terms and conditions upon which the County will administer and enforce the Municipality's Cable Communications Ordinance, if any, and implement Chapter 8A and the Starpower cable franchise.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and the Municipality agree as follows:

1. The Municipality requests that the County administer and enforce Chapter 8A within the corporate limits of the Municipality, and authorizes the County to act as the agent of the Municipality in connection with the negotiation, administration and enforcement of the approved cable franchise agreement to be effective within the corporate limits of the

Municipality. The County agrees to administer such franchise within the Municipality's corporate boundaries as an agent of the Municipality.

2. To the extent permitted by law and by the franchise agreement, the following obligations shall be enforced by the County and enforceable by the Municipality:

(a) The cable communications system shall be constructed to serve the entire Municipality.

(b) The Municipality shall not be discriminated against in the array of channels and services offered by the franchisee, or in the rates charged to customers in the Municipality. This provision applies only insofar as the County is authorized to regulate the franchisee's channels, services, and rates.

(c) Pursuant to § 7(a) of the franchise agreement, the following channel capacity shall be available for programming by the Municipality:

(i) One full-time standard definition digital video channel for governmental use by the City of Takoma Park;

(ii) One full-time standard definition digital video channel for governmental use by the Montgomery County Chapter of the Maryland Municipal League.

(d) Pursuant to § 7(b) of the franchise agreement, once Starpower activates high-definition video channels, one full-time high-definition digital video channel for governmental use will be shared by the City of Takoma Park, the Town of Chevy Chase, Chevy Chase Section 5 of the Village of Chevy Chase, the Village of Martin's Additions, the Village of North Chevy Chase, and the City of Rockville.

(e) All waivers and indemnifications obtained by the County from the franchisee shall inure to the benefit of the Municipality.

3. Franchise fees shall be distributed to the Municipality in accordance with Section 8A-29 of the Montgomery County Code. If Section 8A-29 is amended to allow the County to retain more than thirty (30) percent of the Municipality's franchise fees as compensation for the administration of the franchise within the Municipality, the Municipality may terminate this agreement upon thirty (30) days written notice to the County. The distribution shall be made within thirty (30) days after receipt by the County of the franchise fees from the franchisee.

4. Upon the terms and conditions set forth in the franchise agreement and the settlement agreement attached as Exhibit F to the franchise agreement, the County shall distribute one-ninth (1/9th) of the 3% PEG and I-Net Grant ("grant") from the franchisee to Takoma Park and one-ninth (1/9th) of the grant to Town of Chevy Chase/Chevy Chase Section 5/Martin's Additions/Village of North Chevy Chase, care of the Montgomery County Chapter of the Maryland Municipal League, or its successor in interest. Pursuant to the settlement agreement and the franchise agreement, the funds distributed by the County pursuant to this paragraph may be used for capital, non-capital, and institutional network support for PEG purposes. The distribution of each installment shall be made by the County within thirty (30) days after the County receives the grant from Comcast. The County's obligation to distribute the funds as described above shall not be extinguished as to the signatory of this Agreement if any of the other Participating Municipalities terminates this Agreement in accordance with its terms. Any portion of the grant that is not distributed by the County will be retained by the County for its use.

5. Because the franchisee's failure to comply with the provisions of the franchise agreement will result in injury to the Municipality, the extent of which will be difficult to determine, and because the franchise agreement provides for liquidated damages for certain breaches of the franchise agreement, the County will collect, on behalf of the affected Participating Municipality, liquidated damages in accordance with Section 14 of the franchise agreement and shall distribute the Municipality's proportionate share to the Municipality as permitted by law, Council appropriation, and the franchise agreement. The foregoing shall apply to liquidated damages payable pursuant to Section 14 if the breach directly harms the Municipality.

6. With the exception of paragraph 8, this Agreement shall expire and be of no further force and effect upon revocation of the franchise by the County or the Municipality, or expiration of the franchise effective within the Municipality, subject to any extension of, or continued performance under, the said franchise; provided, however, that either party shall continue to have the right to assert any claims with respect to any obligation or arising out of any breach of this Agreement occurring prior to the revocation or expiration hereof. The franchise within the Municipality shall not be renewed or extended by the County without the approval of the Municipality.

7. In the event of a material breach of this Agreement by either party, the party not in default shall give the defaulting party notice of such breach and an opportunity to cure the same for a period of thirty (30) days following the giving of such notice. If the defaulting party does not cure the material breach within thirty (30) days of the date of such notice, this Agreement may be terminated by the non-defaulting party upon ten (10) days' written notice to the party committing a material breach hereof. Any notice pursuant to this paragraph of the Agreement

shall be hand delivered, with receipt acknowledged, or mailed by certified mail, restricted delivery, addressed in the case of the County, to: Isiah Leggett, County Executive (or successor), Executive Office Building, 101 Monroe Street, Maryland 20850, in the case of the Municipality, to: _____ . Termination of this Agreement shall not result in the termination of the franchise agreement. If this Agreement is terminated, the Municipality shall become responsible for the administration and enforcement of the franchise agreement within its corporate limits and shall be entitled to collect and retain the franchise fee and PEG Capital Grant on all revenues derived from subscribers within the Municipality.

8. The County agrees to indemnify, defend, and hold the Municipality harmless from the County's actions in connection with the County's award of the franchise, and the County's administration and enforcement of Chapter 8A of the County Code, and the franchise agreement. Any obligation or liability of the County arising in any way from this Agreement is subject to, limited by and contingent upon the appropriation and availability of funds, as well as the types of liabilities, damage caps and notice requirements stated in the Maryland Local Government Tort Claims Act, currently found at Maryland Code Annotated, Courts & Judicial Proceedings, Section 5-301, *et seq.* Any indemnification given by the County in this Agreement is not intended to create any rights in any third parties. The County shall neither be responsible, nor required to indemnify the Municipality, for the negligence, misconduct or inaction of third parties or the Municipality, its employees, or agents regarding any matter covered by this Agreement.

9. This Agreement supersedes and replaces all prior agreements between the Parties related to the enforcement of the Ordinance and the implementation of the Starpower franchise.

IN WITNESS WHEREOF, the County and the Municipality have executed this Agreement as of the day and year first written above.

WITNESS:

MONTGOMERY COUNTY, MARYLAND

By: _____

Isiah Leggett
County Executive

Date: _____

WITNESS:

Municipality

By _____

Date: _____

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY

BY _____

DATE: _____