

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

352



**FROM:** Purchasing and Fleet Services Department

**SUBMITTAL DATE:**  
November 07, 2006

**SUBJECT:** Resolution 2006-435 granting a Nonexclusive Franchise Agreement between the County and Verizon California, Inc.

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Conduct a public hearing to obtain public comments on the proposed cable franchise agreement between the County and Verizon California, Inc. ("Franchise Agreement") and to consider the impacts of the proposed Franchise Agreement, as required by California Government Code § 53066.3, 47 U.S.C. § 541 (a), and other applicable provisions of law.
2. That at the conclusion of the public hearing that the Board adopts Resolution 2006-435 granting cable franchise agreement between the County and Verizon California, Inc.
3. Consider this staff report that sets forth an analysis, conclusions, and recommendations concerning each of the factors set forth in California Government Code § 53066.3 , 47 U.S.C. § 541 (a), and other applicable provisions of law, and recommendations that the Board approve the proposed Franchise Agreement.

**BACKGROUND:** (Continued on Page 2)

ROBERT J. HOWDY SHELL  
Director, Purchasing and Fleet Services Dept.

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	06/07

<b>SOURCE OF FUNDS:</b>	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** **APPROVE**

County Executive Office Signature

- Dept't Recomm.:  Consent  Policy
- Per Exec. Ofc.:  Consent  Policy

Prev. Agn. Ref.: \_\_\_\_\_ District: \_\_\_\_\_ Agenda Number: \_\_\_\_\_

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

9 . 4

FORM APPROVED COUNTY COUNSEL

NOV 02 2006

Departmental Concurrence

**BOARD OF SUPERVISORS**

**FORM 11:** Resolution 2006-435 granting a Nonexclusive Franchise Agreement between the County and Verizon California, Inc.

**PAGE 2**

**BACKGROUND (Continued)**

Verizon California Inc. ("Verizon") is the primary provider of residential telephone service within the County. As part of Verizon's fiber-optic upgrade to that system, it will now have the capacity to provide cable television service. Before providing this service, however, Verizon must obtain a cable television franchise from the County.

Verizon has requested a nonexclusive franchise agreement to operate a cable system and to provide cable television service in the County. Over the past several months, Verizon representatives and County staff have negotiated the provisions of the proposed Franchise Agreement to be considered by the Board.

Notice of a public hearing by the Board to consider the proposed Franchise Agreement was duly published in The Press-Enterprise on October 30, 2006, and November 6, 2006, in accordance with California Government Code §§ 6066 and 53066.3(a)-(d). A copy of the proposed Franchise Agreement has been available for inspection at the County Administrative Center since October 30, 2006. Verizon is currently in the process of upgrading its existing telecommunications facilities in the County by installing a state-of-the-art Fiber-to-the-Premises Telecommunications Network ("FTTP Network"). The FTTP Network will use fiber-optic cables and associated optical electronics instead of copper wire to connect customers to the Verizon network. The FTTP Network will use laser-generated pulses of light to transmit voice, data and video signals over the fiber at speeds and capacities far exceeding today's copper-cable systems.

Among the services that Verizon's FTTP Network will be able to provide is cable television service. Verizon has, therefore, applied for a cable franchise from the County to use the FTTP Network to provide cable service to County residents in competition with incumbent cable operators under the terms and conditions of the proposed Franchise Agreement.

Federal and state law set forth requirements with respect to granting an additional cable franchise. The federal Communications Act requires that the County "assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides" and sets forth certain provisions that shall or may be included in a franchise. California Government Code § 53066 requires that the County conduct a public hearing to identify the impacts on the community of granting an additional cable franchise and that the Board consider certain specified criteria in making its determination whether to grant an additional franchise.

Staff has examined each of the legal requirements for Board approval of the proposed Franchise Agreement, as well as any applicable provisions of existing licenses with incumbent cable operators. This examination is documented in the "Findings of Fact" attached to the Staff Report. Based upon the information and representations set forth by Verizon, other evidence presented to staff, and staff's own investigation, staff believes that the proposed Franchise Agreement meets all of the legal requirements for Board approval. Staff therefore recommends that the Board approve the proposed Franchise Agreement and authorize the Chairman of the Board to execute the proposed Franchise Agreement.

2 RESOLUTION NO. 06-435

3 A RESOLUTION OF THE BOARD OF SUPERVISORS OF  
4 THE COUNTY OF RIVERSIDE APPROVING AND  
5 AUTHORIZING THE EXECUTION OF A NONEXCLUSIVE  
6 CABLE FRANCHISE AGREEMENT BETWEEN THE  
7 COUNTY AND VERIZON CALIFORNIA INC.

8 THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE DOES  
9 RESOLVE AS FOLLOWS:

10 Section 1. This resolution is adopted in consideration of the following facts and  
11 circumstances:  
12

13 A. The County of Riverside is a "Franchising Authority" as defined in Title VI  
14 of the Communications Act (see 47 U.S.C. § 522(10)) and is authorized to grant one or  
15 more nonexclusive cable franchises in accordance with California Government Code  
16 Section 53066 and Ordinance No. 503.11 of the County of Riverside.  
17

18 B. Verizon California Inc. ("Franchisee") is in the process of installing a Fiber-  
19 to-the-Premise Telecommunications Network ("FTTP Network") that will occupy the  
20 public rights-of-way within the County of Riverside for the transmission of non-cable  
21 services pursuant to its status as a telecommunications carrier as set forth in Title II of  
22 the federal Communications Act and under authority granted by the State of California.  
23

24 C. The FTTP Network, once installed, will enable the provision of cable  
25 service to the residents of the County.

1 D. Negotiations between the Franchising Authority and the Franchisee have  
2 resulted in a cable franchise agreement, which agreement comports with the  
3 requirements of applicable law.  
4

5 E. Notice of a public hearing by the Franchising Authority to consider the  
6 proposed cable franchise agreement was properly published in The Press-Enterprise  
7 on October 30, 2006, and November 6, 2006, in accordance with California  
8 Government Code Sections 6066 and 53066.3(a).  
9

10 F. The Franchising Authority has reviewed the legal, technical, and financial  
11 qualifications of the Franchisee to operate a cable system and to provide cable service  
12 within the County, and the Franchising Authority's staff has prepared a Staff Report  
13 dated November 7, 2006, ("Staff Report"). The Staff Report sets forth Franchisee's  
14 qualifications, identifies the future cable-related needs and interests of the County and  
15 its residents, and discusses each of the requirements and criteria set forth by federal,  
16 state, and local law with respect to granting an additional cable television franchise.  
17

18 G. After receiving the comments of interested parties at a public hearing  
19 affording due process to all parties, reviewing the entire record regarding this matter  
20 before it, and specifically considering each of the factors set forth in California  
21 Government Code Section 53066.3(a), 47 U.S.C. Section 541(a), and all other  
22 applicable provisions of law, the Franchising Authority determines that it is in the public  
23 interest to approve and to authorize the execution of the proposed cable franchise  
24 agreement.  
25

1           Section 2.    The Franchising Authority finds and determines that the cable-  
2 related needs and interests of the County, and the Franchisee's legal, technical, and  
3 financial qualifications to operate a cable system and to provide cable service within  
4 the County, are accurately identified in the Staff Report dated November 7, 2006. This  
5 Staff Report, as well as the supporting evidence presented at the public hearing on  
6 November 14, 2006, is hereby adopted in its entirety by the Franchising Authority as its  
7 ascertainment of the County's cable-related needs and interests and the Franchisee's  
8 qualifications to operate a cable system and to provide cable service within the County.  
9 The Staff Report and evidence also substantiate the Franchising Authority's  
10 consideration of each of the requirements and criteria set forth in California  
11 Government Code Section 53066.3(a), 47 U.S.C. § 541(a), and all other applicable  
12 provisions of law, as well as any applicable provisions in existing licenses.  
13

14           Section 3.    The Franchising Authority finds and determines that it is in the  
15 public interest to grant to Verizon California Inc. a nonexclusive franchise to operate a  
16 cable system and to provide cable service within the County. As evidence of the  
17 Franchising Authority's consideration of each of the factors set forth in California  
18 Government Code Section 53066(a), 47 U.S.C. § 541(a), and all other applicable  
19 provisions in existing law, the Franchising Authority hereby adopts in support of this  
20 determination the "Findings of Fact" that are attached to the Staff Report dated  
21 November 7, 2006.  
22

23           Section 4.    Based upon the findings and determinations set forth above in  
24 Sections 2 and 3, the Franchising Authority authorizes the grant of a nonexclusive  
25

1 franchise to Verizon California Inc. to operate a cable system and to provide cable  
2 service within the County. This authorization is made in accordance with the applicable  
3 provisions of California Government Code Section 53066.3 and Title VI of the  
4 Communications Act. A copy of the Cable Franchise Agreement in the form presented  
5 to the Franchising Authority at its public hearing on November 14, 2006, is directed to  
6 be retained in the office of the County Clerk for the purpose of public inspection for a  
7 period of 30 days after the effective date of this resolution.  
8

9 Section 5. That certain Cable Franchise Agreement in the form presented to  
10 the Franchising Authority at this public hearing is approved, and the Chairman of the  
11 Board of Supervisors is authorized and directed to execute that agreement on behalf of  
12 the Franchising Authority following its execution by the Franchisee.  
13

14 Section 6. The Clerk of the Board is directed to transmit a certified copy of this  
15 resolution to: Mr. Tim McCallion, President, Verizon California Inc., 112 Lakeview  
16 Canyon Road, Thousand Oaks, California 91362.  
17

18 Section 7. The Clerk of the Board is directed to certify to the passage and  
19 adoption of this resolution.  
20

21 PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006.  
22

23 COUNTY OF RIVERSIDE

24 BY:

25 \_\_\_\_\_  
Chairman, Board of Supervisors

FORM APPROVED  
COUNTY COUNSEL

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BY: 

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ATTEST

NANCY ROMERO  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

## FINDINGS OF FACT

(Attachment to Form 11)

### **Analysis of Proposed Franchise Agreement:**

Verizon is installing its FTTP Network as a common carrier pursuant to Title II of the Communications Act, and in accordance with its Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission, Section 7901 of the California Public Utilities Code, and General Administrative Order 95. Verizon seeks to provide cable service to County residents in competition with existing cable operators serving the County. Under the terms and conditions of the proposed Franchise Agreement, Verizon will provide the cable service over its FTTP Network, along with voice and high-speed data services.

The Board may approve a franchise agreement subsequent to a public hearing to consider such a grant of franchise. In reviewing the request and making a determination whether to approve the proposed Franchise Agreement, the Board must make its decision based upon the documents and testimony received at the hearing and the record as a whole. In addition, California Government Code § 53066.3(a) specifically requires the Board to consider certain criteria in determining whether to grant an additional cable franchise. These criteria are:

- Whether there will be significant positive or negative impacts on the community being served.
- Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the area.
- Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use of utility poles, public easements, and the public rights-of-way contrary to the intent of Section 767.5 of the California Public Utilities Code.
- Whether the franchise applicant has the technical and financial ability to perform.
- Whether there is any impact on the franchising authority's interest in having universal cable service.
- Whether other societal interests generally considered by franchising authorities will be met.
- Whether the operation of an additional cable system in the community is economically feasible.
- Such other additional matters, both procedural and substantive, as the franchising authority may determine to be relevant.

In addition, California Government Code § 53066.3(d) and the Communications Act contain certain nondiscrimination requirements relating to the grant of the franchise. California Government Code § 53066.3(d) also requires that the proposed cable franchise contain the same public, educational, and governmental access requirements that are set forth in any existing franchises or licenses.

### **Major Provisions of the Proposed Franchise Agreement:**

Staff has negotiated the proposed Franchise Agreement with Verizon based on the identification and prioritization of the cable-related needs and interests of the residents of the County, including public, educational, and governmental (“PEG”) service obligations. The proposed Franchise Agreement with Verizon includes the following key provisions:

- Provision of cable service to all residential areas of the County that are within the Initial Service Area within 18 months of the effective date of the Agreement, and provision of cable service to all residential areas that are within the Extended Service Area within 60 months of the effective date of the Agreement. (Article 3 and Exhibit A)
- Quarterly franchise fee payments of five percent (5%) of Gross Revenues, as defined. (Article 7)
- A 15-year term from the effective date, unless the franchise is revoked earlier, as provided in the Franchise Agreement. (Article 2.3)
- PEG programming and support, including dedicated public, educational and governmental access channels, and either interconnection with existing cable operators or a direct connection to the County Administrative Center for the carriage of PEG programming. (Article 6 and Exhibit B)
- Customer service standards, including requirements regarding telephone availability for customer inquiries, billing, installation and service calls, complaint procedures, and communications with subscribers. (Article 8 and Exhibit C)
- The right to audit the records supporting Verizon’s payment of franchise fees. (Article 9.1)
- Liability insurance and indemnification requirements. (Article 10)
- Enforcement and termination provisions. (Article 13)
- Technical standards for operation of Verizon’s cable system. (Article 5)
- Franchise renewal and transfer procedures. (Articles 11 and 12)
- “Acceptance Fee” in the sum of \$10,000 to reimburse the County for costs and expenses incurred in negotiating and processing the Franchise Agreement. (Article 14.15)

### **Analysis of Legal Requirements:**

The proposed Franchise Agreement will be considered by the Board following a duly noticed public hearing, in accordance with applicable law. Staff has analyzed each of the legal requirements for the grant of an additional cable franchise as follows:

1. **Whether there will be significant positive or negative impacts on the community being served.** [Cal. Gov’t Code § 53066.3(a)(1).]

The grant of a nonexclusive cable franchise to Verizon will have no negative impact on the community, and the overall impact of Verizon’s presence as a cable service provider

in the County will potentially be positive. Among the most significant positive impacts are those related to the benefits that competition will bring to County residents.

The California State Legislature has proclaimed by statute that it: "...hereby finds and declares that the policies for telecommunications in California are...to promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct" and "to remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice." Cal. Pub. Util. Code §§ 709(f) & (g).

Congress, the General Accounting Office, and the Federal Communications Commission have specifically found that wireline competition in the provision of cable service results in higher customer service quality, improved programming, and lower rates.

By providing competition, the grant of a nonexclusive franchise to Verizon to provide cable services will have a significant positive impact on the County and will not have any negative impact.

**2. Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the area. [Cal. Gov't Code § 53066.3(a)(2).]**

Staff has determined that the grant of a nonexclusive cable franchise to Verizon will not result in any unreasonable adverse economic impact on the County. Grant of the franchise will bring competition for cable programming service to the residents of the County and potentially result in a positive economic impact for subscribers. There will also be a potential positive impact on the County's economic development efforts. With the grant of a franchise to Verizon, County residents will be able to subscribe to bundled services that include video, voice, and data over the FTTP Network. The FTTP Network will enable subscribers to enjoy digital cable service, unencumbered by the need to share bandwidth with voice and data services.

Granting Verizon a franchise may also increase cable penetration, adding subscribers to the County's franchise fee base. Some residents who do not currently subscribe to cable service, or who are now satellite customers, may subscribe to Verizon's cable service, thereby increasing the overall number of subscribers generating revenue on which cable franchise fees are paid. The increase in content choices proposed to be provided by Verizon's service offerings has the potential to generate more purchases in the higher cable tiers, thereby increasing the franchise fee revenue base in this manner as well.

Staff has also determined that the grant of a franchise to Verizon will not result in any unreasonable adverse aesthetic impacts upon public or private property within the County. Verizon is seeking a franchise from the County to provide cable services over its existing FTTP Network, when it is completed. The FTTP Network carrying Verizon's cable services will be constructed, operated, and maintained as an upgrade to or an extension of its existing telecommunications facilities pursuant to authority granted by

the state. During the installation of the FTTP Network, Verizon will work in coordination with the County to minimize disruptions and adverse impacts to County streets. Where the existing network is placed overhead, on existing utility poles, the upgraded network facilities will be placed overhead; where the existing network is placed underground, the upgraded network will be placed underground. Because the facilities used to provide Verizon's cable services will be the same facilities used to provide the other services that will be carried by Verizon's FTTP Network, the grant of a cable franchise will have no additional adverse aesthetic effect on public or private property.

**3. Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the public rights-of-way contrary to the intent of Section 767.5 of the Public Utilities Code.** [Cal. Gov't Code § 53066.3(a)(3).]

Staff has determined that there will not be any unreasonable disruptions or inconvenience to existing cable users, nor any adverse effects in the areas noted above. Because the facilities used to provide Verizon's cable services will be the same facilities used to provide the other services that will be carried by Verizon's FTTP Network, consistent with Section 767.5 of the Public Utilities Code, the grant of a cable franchise to Verizon will cause no additional disruptions or inconvenience to existing users, nor any adverse effects on the future use of utility poles, public easements, or public rights-of-way.

**4. Whether the franchise applicant has the technical and financial ability to perform.** [Cal. Gov't Code § 53066.3(a)(4).]

Staff has concluded that Verizon has demonstrated its financial, technical, and legal qualifications and the ability to provide cable service in the County.

**5. Whether there is any impact on the franchising authority's interest in having universal cable service.** [Cal. Gov't Code § 53066.3(a)(5).]

The grant of a nonexclusive cable franchise to Verizon will have a positive impact on the County's interest in universal cable service. Providing the residents of the County with a choice of providers will have a positive impact on the County's desire to promote universal cable service.

**6. Whether other societal interests generally considered by franchising authorities will be met.** [Cal. Gov't Code § 53066.3(a)(6).]

Staff has determined that the grant of a nonexclusive franchise to Verizon will meet a variety of societal interests generally considered by franchising authorities. These include the County's interest in enhancing civic awareness and community participation through the reservation of public, educational, and governmental access channels on the proposed cable system; the County's interest in community connectivity through Verizon's provision of cable service to County buildings and facilities; the County's interest in generating additional revenue through the payment of franchise fees; and the

County's interest in continuing economic development in the community, as Verizon's state-of-the-art service offerings and network may add to the value and attractiveness of local residential and business development efforts. Finally, providing residents with a choice of cable providers will also enhance societal interests in the community by bringing to the County the benefits of competition in the provision of cable services.

**7. Whether the operation of an additional cable system in the community is economically feasible.** [Cal. Gov't Code § 53066.3(a)(7).]

Staff has determined that it is economically feasible for the community to support a competitive cable service provider. Verizon intends to offer a competitive program lineup that will be attractive to cable subscribers. In addition, Verizon is installing the FTTP Network over which its cable service will be delivered as an upgrade to its existing telecommunications network that will also carry voice and data services. This should result in a reduction of the capital expenditures needed to enable Verizon to support its cable service offering.

Given the growth in the County, median household incomes, and the community's expressed desire for competitive cable offerings, staff has determined that the operation of an additional cable system in the County is economically feasible.

**8. Such other additional matters, both procedural and substantive, as the franchising authority may determine to be relevant.** [Cal. Gov't Code § 53066.3(a)(8).]

(a) PEG Requirements.

California Government Code § 53066.3(d) requires the County to ensure that competitive franchise agreements contain the same public, educational, and governmental (PEG) access requirements that are set forth in existing franchises with incumbents.

The nonexclusive licenses previously issued by the County to the incumbent cable operators do not impose any obligations to provide channel capacity or financial support for public, educational, or governmental ("PEG") access channels within the County. Nevertheless, the County and Charter Communications have entered into an arrangement whereby meetings of the Board of Supervisors are cablecast to Charter's subscribers. The proposed Franchise Agreement requires Verizon initially to provide one dedicated PEG access channel and to carry the governmental programming that is cablecast on Charter's cable system, either by means of an interconnection with Charter or by providing a connection at the County Administrative Center. The proposed Franchise Agreement further requires Verizon to reserve one additional PEG access channel that will be available for County use when certain criteria have been met.

Verizon has agreed to provide ongoing monetary support for PEG programming in the form of annual grants on a per subscriber basis, up to a maximum of one percent of gross

revenues. These grants will commence when other cable operators in the County are required to provide PEG financial support on a per subscriber basis.

Staff has determined that the terms of the proposed Franchise Agreement ensure that Verizon will provide adequate PEG access channel capacity, facilities, and financial support, and that Verizon's obligations in this area exceed those contained in the County's existing license agreements with the incumbent cable operators.

(b) Non-Discrimination Requirements.

State and Federal laws contain certain non-discrimination requirements. Staff has determined that Verizon's proposed build out of its cable system complies with these requirements.

(c) Rates to Subscribers.

As part of the 1996 amendments to the Communications Act, local communities must be certified by the FCC to regulate cable rates, may regulate only rates for the basic service tier and only for cable operators that are not subject to "effective competition" as defined under the Act. The County's authority to regulate rates of upper programming tiers, or cable programming service tiers, sunset in 1999. As a new competitive entrant into the cable market, Verizon is, by definition, subject to "effective competition". As such, the County may not regulate Verizon's cable rates. Nonetheless, Verizon has indicated to staff its intention to offer cable service that is fully competitive with existing cable offerings in the market.

(d) Willingness and Ability of the Applicant to Meet Construction Requirements and Abide by Franchise Limitations and Requirements.

Verizon's FTTP Network is being constructed as a telecommunications facility pursuant to Title II of the Communications Act, its Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission, Section 7901 of the California Public Utilities Code, and General Administrative Order 95 of the Public Utilities Commission. As such, Verizon has existing authority apart from the proposed cable franchise to construct the FTTP Network. Therefore, the proposed Franchise Agreement recognizes that the County does not, and cannot, regulate Verizon's telecommunications facilities except to the extent specifically permitted by federal and state law.

(e) Establishment of a "Level Playing Field" for Cable Operators.

The proposed Franchise Agreement with Verizon has been negotiated by County staff substantially in accordance with the new regulatory policies and procedures set forth in County Ordinance No. 503.11. County Ordinance No. 503.11 is intended to replace and supersede the nonexclusive license procedures set forth in Ordinance No. 503.10, under which the incumbent cable operators in the County now provide cable service. It is

anticipated that the material provisions of the proposed Franchise Agreement with Verizon will be incorporated into cable franchise agreements with these incumbent cable operators as their existing licenses expire. In this manner, a "level playing field" among cable operators can be established and maintained.

**Conclusion:**

Negotiations between Verizon and the County have resulted in an agreement that contains a number of provisions designed to protect the interests of the County and its residents. Staff has concluded that the Franchise Agreement will bring economic and developmental benefits to the County and will be a step toward recognizing a variety of other benefits that cable competition can bring to the County and its residents. Based on the evidence presented, staff has concluded that granting to Verizon a nonexclusive franchise to provide cable services is in the public interest and recommends that the Board approve the proposed Franchise Agreement.