



Rochester Hills Master Report

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File Number: 2006-0256

File Number: 2006-0256	File Type: Agreement	Status: To Council
Version: 1	Reference:	Controlling Body: City Council Regular Meeting
Requester: Mayor's Office	Cost:	Introduced: 03/27/2006
File Name: Transfer from WOW to Racecar Acquisition, LLC	Final Action:	

Title: Adoption of Resolution granting consent to the transfer control of the Cable Television System from WideOpen West Holdings, LLC to Racecar Acquisition, LLC

Notes:

Code Sections:

Indexes: Agreements, Cable TV

Sponsors:

Attachments: Agenda Summary.pdf

Agenda Date:

Agenda Number:

Enactment Date:

Enactment Number:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File 2006-0256

..Title

Adoption of Resolution granting consent to the transfer control of the Cable Television System from WideOpen West Holdings, LLC to Racecar Acquisition, LLC

..Body

Whereas, WideOpen West Michigan, LLC (WOW!) is a current cable franchisee for the Local Franchise Authorities within the Intergovernmental Cable Communications Authority (ICCA); and

Whereas, WideOpen West Holdings, LLC and Racecar Acquisition, LLC submitted an application on December 27, 2005 for Franchise Authority Consent to the transfer of control of the cable television franchise; and,

Whereas, the Local Franchising Authority is relying upon such information as contained in the FCC Form 394 application, documents and additional information provided by WideOpen West Holdings, LLC and acted upon the application and such information for franchising authority consent. The Local Franchising Authority intends to consent to the transfer of control subject to the acceptance of the terms and conditions set forth herein with the hope that such consent is in the best interest of the local franchising authority.

Now Therefore, Be It Resolved as follows:

1. The Local Franchising Authority does hereby consent to the transfer of control of the franchisee from WideOpen West Holdings, LLC to Racecar Acquisition, LLC in the manner described in the Agreement and Plan of Merger dated December 13, 2005, subject to the following conditions precedent and conditions subsequent:

Conditions Precedent

- a) The written representation by WideOpen West Michigan, LLC that it will promptly notify the Local Franchising Authority, in writing of any change in service or operation in the Local Franchising Authority's cable system and/or change in the personnel directly responsible for the operation of the Local Franchising Authority's system in contemplation of, or as a result of consummation of the Agreement and Plan of Merger; and
- b) The prompt and proper remediation of all existing defaults under the current Cable Franchise Agreement with local franchising authority, if any, as may be specified in writing by the Local Franchise Authority; and, the representation in writing by Wide Open West Holdings, LLC that it has no knowledge of any defaults except those that are identified by it; and,
- c) WideOpen West and all of the parties to the Agreement and Plan of Merger dated December 13, 2005 will provide a statement that the Transferee and Transferor will provide full and immediate cooperation with respect to the franchise fee review or audit being conducted by the Local Franchising Authority and/or the ICCA including, but not limited to the transmission of all necessary information to the auditors and/or attorneys that have requested said information within ten (10) days from said request.
- d) The Transferee agrees in writing to accept and be bound by the Franchise Agreement and the cable regulatory ordinances as presently constituted by the Local Franchising Authority. In all instances, the Transferee will assume all obligations known or unknown of the existing franchise.
- e) All existing defaults are to be remedied as a condition precedent to approval with the exception that the LFA's have asserted that the Franchisee failed to pay Franchisor the correct amount of franchise and PEG fees, which the Franchisee has heretofore agreed to cooperate in a review of said payments pursuant to paragraph C hereof and without admitting liability.
- f) All prior agreements and undertakings by the Franchisee between the Franchisee and the Authority and any of the Authority's member communities, apart from the Franchise Agreement, shall remain in full force and effect and the Transferee shall cause the same to be honored by the Franchisee.

Conditions Subsequent

- a) The automatic revocation of the Local Franchising Authority's approval if the Agreement and Plan of Merger is not consummated by July 31, 2006, or such Agreement is terminated prior to that time without the same having been consummated; and,
- b) Reimbursement within thirty (30) days to the Local Franchising Authority by any of the parties to the Agreement and Plan of Merger of December 13, 2005 for the reasonable out-of-pocket expenses incurred by the ICCA or the Local Franchising Authority attributed to the ICCA or the Local Franchising

Authority's consideration of the transfer application.

Grant of Consent

The Local Franchising Authority's grant of consent to the transfer of WideOpen West Holdings, LLC to Racecar Acquisition, LLC pursuant to the Agreement and Plan of Merger dated December 13, 2005 shall be effective immediately subject to the above conditions, and further requires WideOpen West Michigan, LLC to notify the Local Franchising Authority promptly upon the closing of the transaction described in the aforementioned Agreement and Plan of Merger. The Local Franchising Authority is hereby authorized to enter into, execute and deliver in the name of the Local Franchising Authority a certificate along with such other documents as may be necessary evidencing this Resolution without further act or Resolution of the governing body.