



TO: Elizabeth Pauli, City Manager
FROM: Chris Bacha, Chief Deputy City Attorney, City Attorney's Office
William Fosbre, City Attorney, City Attorney's Office
COPY: City Council and City Clerk
SUBJECT: Resolution - Recommending approval of the Click! Business Transaction Agreement and authorizing the Mayor to execute the Indefeasible Right of Use Agreement – November 5, 2019
DATE: October 25, 2019

SUMMARY:

A resolution approving the Click! Business Transaction Agreement and authorizing the Mayor to execute the Indefeasible Right of Use Agreement with Rainier Connect upon joint determination by the City Manager and Public Utilities Director that the conditions precedent to transfer of operational control have been met.

STRATEGIC POLICY PRIORITY:

- Ensure all Tacoma residents are valued and have access to resources to meet their needs.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

Approval of this action will allow use of the excess capacity of the HFC Network and ownership of related inventory, equipment and vehicles to be transferred to Rainier Connect through the Click! Business Transaction Agreement and Indefeasible Right of Use Agreement that will, among other things; continue use of the Click! Network to provide cable, video and broadband internet access to families and businesses in Tacoma; maintain ownership of the Click! Network; require private capital to be used to operate, maintain and upgrade the network to one gigabit speeds in competition with other providers; ensure that such services are provided in an equitable manner with like services and prices throughout the City; and, provide for reduced-cost internet access under the federal lifeline subsidy and to households eligible for TPU's electric service low-income program.

BACKGROUND:

Tacoma Power, under the tradename "Click! Network", began operating the cable system in 1998 providing cable television and wholesale cable modem (internet access services). Since that time technology and consumer demands have changed and operational costs for the Click! Network have significantly increased. The Click! Network business model has become outdated as consumers have shifted from predominantly consuming cable programming services to cable modem services. Click! Network has been unable to respond quickly or efficiently to changes in the market place and does not have the capacity to make capital investments necessary to upgrade the network and compete with the private sector. In response to these challenges, the Public Utility Board ("PUB"), in 2009, began to study alternative Click! Network business models and, after many years of study, the PUB in collaboration with the City Council retained the services of CTC Technology & Energy ("CTC") to assist in this analysis. In January 2018 at a joint study session of the PUB and City Council, CTC presented its report examining which of the following five alternative business models would best meet 12 Click! Network policy goals later adopted by the PUB and City Council:

- Continue finding ways to reduce costs and streamline operations
- Become a retail internet service provider (ISP) and potentially eliminate cable TV operations



- Upgrade the Click network to fiber-to-the-premises in an effort to better compete with incumbents in the market
- Cease internet and cable operations and abandon the related parts of the network
- Seek a partner willing to take on operating and other obligations and costs while agreeing to conditions that would preserve Click's significant policy achievements.

CTC reported that the 12 policy goals could best be met through a business model in which the City retained ownership of the entire HFC Network, including the Click! Commercial Network, with a third party providing Cable TV and/or internet access services and covering the capital and operating costs associated with providing those services. Under this model, Tacoma Power would no longer provide cable television or wholesale internet access services, and the third party would provide Cable TV, video and broadband internet access services directly to the public.

In January 2018, based upon the CTC report and years of study of multiple business models, the PUB pursuant to Resolution No. U-10988 and City Council pursuant to Resolution No. 39930 formally approved the 12 policy goals for Click! Network and directed the Public Utilities Director and City Manager to work jointly with CTC to issue a request for information, qualifications or proposals and examine the extent to which the 12 community policy goals could be achieved through collaboration and restructuring of Click!. At the August 21, 2018 Joint PUB and City Council study session CTC recommended that the PUB and City Council authorize negotiation of term sheets with Rainier Connect and Wave Broadband. The term sheets were presented by CTC to the PUB and City Council at the March 5, 2019 joint PUB and City Council study session and the recommendation was made to engage in contract negotiations with Rainier Connect based upon the term sheet agreed to by Rainier Connect pursuant to a letter of intent. Negotiations commenced in April and the Click! Business Transaction Agreement is now complete. On October 30, 2019, the PUB adopted Resolution U-11116, approving the Click! Business Transaction Agreement conditioned upon approval by the City Council.

This agreement establishes a transition period during which Rainier Connect and Tacoma Power will commit to meet certain obligations as a condition precedent to the execution of the Indefeasible Right of Use (IRU) Agreement. It is anticipated that it will take a minimum of 90 days, and could be as long as 180 days, before operating control will be transferred Rainier Connect once the Click! Business Transition Agreement is approved and executed. Tacoma Power will continue to operate Click! Network during this transition period. If Rainier Connect and the City Manager and Utilities Director determine that the conditions precedent are met, the IRU will be executed by Rainier Connect and by the Mayor on behalf of the City. Upon the effective date of the IRU, operating control over the Click! Network will be transferred to Rainier Connect at which time Tacoma Power will cease Click! Network operations and services over the network and Rainier Connect will commence providing cable, video and broadband internet access services for and on behalf of Rainier Connect pursuant to the terms and conditions of the IRU.

ISSUE:

Whether the Click! Business Transition Agreement should be approved.

ALTERNATIVES:

If the resolution is not approved operational control of Click! Network cannot be transferred to Rainier Connect and Tacoma Power will continue to operate the Click! Network under the current business model; however, this business model is not sustainable and Tacoma Power in the near future will face the choice of reducing or eliminating services.



RECOMMENDATION:

Staff's recommendation is to approve the Click! Business Transaction Agreement and authorize the Mayor to execute the Indefeasible Right of Use Agreement.

FISCAL IMPACT:

If operating control is transferred to Rainier Connect, Click! Network will cease all business operations and services, resulting in a loss of all Click! Network gross revenues and a corresponding elimination of all operating costs and expenses attributed to Click! Network. Tacoma Power will receive additional revenues from Rainier Connect of \$2,500,000 for year 1, \$2,625,000 for year 2, \$2,750,000 for year 3, \$2,875,000 for year 4, \$3,000,000 for year 5, and for each year after year 5, the annual payment will increase to reflect the Consumer Price Index Increase. These revenues will be subject to the gross earnings tax. The loss of gross earnings tax assessed upon operating revenues will be partially offset by the assessment of utility tax upon gross revenues of Rainier Connect derived from services provided within the City Limits. The City will no longer be able to collect gross earnings tax or utility tax on services provided outside of the City Limits or from earnings from wholesale subscription internet access services, fixed fiber optic broadband transport, and internet access services. Assuming that Click! Network would have no change in subscribers and would have continued to operate and generate revenues, the net loss of gross earnings tax is estimated to be in the range of \$700,000 - \$800,000 annually.