



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 surplus of Click! Network inventory, equipment, and vehicles, and the excess capacity of the HFC Network – November 5, 2019
DATE: October 25, 2019

SUMMARY:

A resolution declaring certain Click! Network inventory, equipment, and vehicles, and the excess capacity of the HFC Network surplus to the needs of the City and not required for continued public utility service. The surplus declaration, if approved, will not affect current Click! Commercial Network operations or services, which will continue until disposition as may be approved by the Public Utilities Board and by the City Council.

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 agreements that will, among other things; continue use of the Click! Network to provide cable 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:

In 1997, the City Council approved Tacoma Power’s proposal to create a hybrid fiber coaxial (“HFC”) network (“HFC Network”) as part of Tacoma Power’s utility infrastructure to, among other things, connect its generation, distribution, and transmission assets; support eventual adoption of smart meters, appliance control and load shaping; and further, to use excess capacity within the HFC Network to provide cable television services to Tacoma Power electric customers and sell data transport and wholesale internet access services (cable modem). The proposal anticipated that the services provided over the excess capacity of the HFC Network would be revenue self-sufficient and contribute to lowering the costs of building and maintaining the HFC Network.

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 internet access 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.

Concurrently, the PUB examined its future needs for the excess capacity of the HFC Network and determined that the Power Control Operations Network (“PCON”) has sufficient capacity to meet the current and future needs of Tacoma Power, Tacoma Water, and Tacoma Rail. Further, while it was anticipated in 1997 that the HFC Network, including the coaxial cable, would be used for smart meters, the PUB has determined that Advanced Metering Infrastructure (“AMI”) using wireless technology in conjunction with the PCON fiber Network can be utilized more efficiently and reliably than the current wireline network. Accordingly, the PUB has approved multiple contracts to implement AMI, and determined that the excess capacity of the HFC Network is no longer needed for the implementation of smart meter technology. As a result, the excess capacity in the HFC Network that is currently used by the Click! Commercial Network, including the Dark Fiber sub-network, are excess and surplus to the needs of Tacoma Power and are not required for, or essential to, continued public utility service. On October 30th, 2019 the PUB approved Resolution U-11116 finding the excess capacity of the HFC Network and the related inventory, equipment and vehicles surplus to Tacoma Power and Tacoma Public Utilities and recommending that the City concur in this recommendation and approve a resolution in conformance with RCW 35.94.040. The surplus declaration does not include the Institutional Network (I-Net) which connects major community institutions like government buildings, schools and public safety and does not include the Power Control and Operations Network which connects Tacoma Power generation, transmission and distribution facilities.

RCW 35.94.040 provides that any property or equipment originally acquired for public utility purposes may be leased, sold or conveyed after a public hearing and pursuant to a resolution declaring such property and equipment surplus to the city’s needs and not required for providing continued public utility service. If the surplus declaration is approved, Tacoma Power will continue operation of Click! Network in the immediate future for the purpose of maintaining the network infrastructure, preserving the value of Click! Network, and ensuring that all of Click!’s customers continue to receive services and can be provided an opportunity to transition to services to be provided pursuant to the proposed agreements, and until such time as the right to use the excess capacity of the HFC Network and related inventory, equipment, and vehicles are transferred.



Although a declaration that an asset is surplus often precedes a decision to sell an asset, there is no requirement that a surplus asset must be sold. The request for the City Council to make a surplus declaration does not indicate that there is any intent to sell any of the excess capacity of the HFC Network in the future. The PUB and City Council have made it clear that they do not intend to sell any portion of the HFC Network, but rather, will retain ownership of the entire HFC Network to ensure that the City has control over how the HFC Network is used, and to ensure that the entire HFC Network meets all security requirements and can continue to meet the needs of Tacoma Power, Tacoma Water, and Tacoma Rail. The proposed agreements include a request that the PUB and City Council approve the sale of some of the inventory, equipment, and vehicles currently being used to provide Click! Network services, but all of the HFC Network will be retained under City ownership.

The consideration proposed to be paid by Rainier Connect for conveyance of the inventory, equipment and vehicles described in Exhibit A.1 to the resolution is \$294,742.98; the consideration to be paid by Rainier Connect for the inventory and equipment described in Exhibit A.2 and A.3 to the resolution, are the contractual obligations of Rainier Connect as set forth in substantially the form of Exhibit B (Click Business Transaction Agreement) to the resolution; and, the consideration proposed to be given for use of the Excess Capacity of the HFC Network, as described in Exhibit B to the resolution, are the obligations of Rainier Connect as set forth in substantially the form of Exhibit B, including but not limited to, the annual payments 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 as described in Exhibit B.

The following reflects the dates at which the PUB or City Council either took action, received information and/or public comment, or when public and stakeholder outreach efforts were taken:

1. April 23, 2015 – Public Utility Board (“PUB”) Town Hall Meeting
2. May 20, 2015 – PUB Study Session
3. June 15, 2015 – Presentation to City Club of Tacoma
4. June 17, 2015 – PUB Study Session
5. July 7, 2015 – PUB/City Council Joint Study Session
6. August 26, 2015 – PUB meeting
7. September 1, 2015 – PUB/City Council Joint Study Session
8. December 3, 2015 – PUB Special Study Session
9. December 3, 2015 – Special Board Meeting
10. December 15, 2015 – City Council Meeting
11. January 13, 2016 – PUB Study Session
12. March 23, 2016 – PUB Study Session
13. January 22, 2016 through August 1, 2106 – 16 meetings of Click! Engagement Committee
14. August 16, 2016 – City Council Study Session
15. September 14, 2016 – PUB Public Hearing
16. September 28, 2016 – PUB Meeting
17. October 25, 2016 – City Council Study Session
18. January 23, 2018 – PUB/City Council Joint Study Session
19. January 24, 2018 – PUB Meeting
20. January 30, 2018 – City Council Meeting
21. March 20, 2018 – Joint Study Session
22. August 21, 2018 Joint Study Session
23. Fall 2018 – Public Outreach Soliciting Feedback from Stakeholders (Employees, Subscribers, Non-subscribers, Businesses, Hi-Tech & Education, ISP-MSA and Public)



24. November 19, 2018 – Public Stakeholder Gathering
25. December 11, 2018 – PUB/City Council Joint Study Session
26. March 5, 2019 – PUB/City Council Joint Study Session
27. March 13, 2019 – PUB Hearing
28. March 18, 2109 – PUB Hearing
29. March 26, 2019 – City Council Meeting
30. May 14, 2019 – PUB/City Council Joint Study Session
31. June 18, 2019 – PUB/City Council Joint Study Session
32. October 22, 2019 PUB/City Council Joint Study Session
33. October 23, 2019 – PUB Hearing
34. October 29, 2019 City Council Public Hearing
35. October 30, PUB special meeting

ISSUE:

Whether Click! Network inventory, equipment, and vehicles, and the excess capacity of the HFC Network, should be declared surplus to the needs of Tacoma Power and the City and not required for continued public utility service.

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 surplus property resolution.

FISCAL IMPACT:

There is no fiscal impact because a declaration of surplus does not require that the surplused property be conveyed, sold or leased.