



MAYOR AND COUNCIL COMMUNICATION

DATE: 07/21/2015  
CONSENT  
ITEM #: 10.5

AGENDA ITEM: 10.5  
SUBMITTED BY: Julie Johnson, City Clerk  
THROUGH: Mayor Pearson  
REVIEWED BY: Julie Johnson, City Clerk

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**SUGGESTED ORDER OF BUSINESS:**

Approval on Consent Agenda

**PUBLIC POLICY STATEMENT (IF APPLICABLE)**

**SUMMARY AND ACTION REQUESTED:**

**BACKGROUND AND STAFF REPORT:**

The Ramsey/Washington County Cable Commission has requested City approval of the attached Policy to allow Century Link to apply for a franchise license to compete with Comcast to provide cable service in communities within the Ramsey/Washington County Cable Commission area. Executive Director Tim Finnerty stated that at least eight of the twelve communities in our area have approved the Policy as of the writing of this memo and none have declined.

**RECOMMENDATION:**

Staff recommends that the City Council approve this request.

**ATTACHMENT(S):**

Ramsey/Washington Counties Suburban Cable Commission Policies and Procedures Governing Application, Review and Recommendations Regarding Grant of Competitive Cable Franchises.

May 11, 2000  
Updated May, 2015

**THE RAMSEY/WASHINGTON COUNTIES SUBURBAN  
CABLE COMMUNICATIONS COMMISSION II**

**POLICIES AND PROCEDURES  
GOVERNING APPLICATION, REVIEW AND RECOMMENDATIONS  
REGARDING GRANT OF COMPETITIVE CABLE FRANCHISES**

**Preamble**

The Ramsey/Washington Counties Suburban Cable Communications Commission II (the "Commission"), on behalf of White Bear Township and the Cities of Birchwood Village, Dellwood, Grant, Lake Elmo, Mahtomedi, Maplewood, North St. Paul, Oakdale, Vadnais Heights, White Bear Lake, and Willernie (collectively, the Member Cities"), administers the cable television Franchises between the Member Cities and the current cable franchisee. The Commission, acting pursuant to a Joint and Cooperative Agreement and authority delegated by the Member Cities thereunder, is responsible for receiving and reviewing cable Franchise applications and for making recommendations to its Member Cities. Only the Member Cities may grant a Franchise.

Modern telecommunications policy, law and regulations encourage the emergence of competition in all telecommunications markets, including competition in the provision of cable services. The emergence of such competition could increase the quality and availability of enhanced telecommunications and video services via Cable Systems, encourage lower rates, encourage better customer service, and generally benefit consumers. Policies and procedures regarding application for and review of applications for competitive cable Franchises will streamline the processing of requests to construct broadband Cable Systems.

In view of the foregoing, the Commission has formulated policies and procedures that govern the submission and review of cable Franchise applications submitted by Applicants seeking to provide Cable Service in all the Member Cities. Pursuant to these Policies and Procedures the Commission has delineated the information which must be provided in an application for a competitive Franchise, detailed a process for review of such application and negotiation of the terms of a Franchise agreement, and provided for the presentation of a formal recommendation regarding the grant of such Franchises to the Member Cities.

**Section 1. Definitions**

"Applicant" shall mean a Cable Company that files an Application with the Commission.

"Application" shall mean the information, documentation, and data, of the form and substance required herein, filed by a Cable Company with the Commission requesting the Commission's consideration regarding any recommendation to grant competitive Franchises in the Member Cities.

"Application Fee" shall mean a fee which is intended to cover all costs incurred by the Commission and the Member Cities related to processing Applications up to and including the grant of a Franchise (if any) including, but not limited to, staff and attorney's time in reviewing and considering an Application and related information, negotiating the terms and conditions of Franchises, and preparing recommendations, Franchises and other documentation related to such Applications.

"Cable Company" shall mean any person or entity owning a significant interest in, controlling, operating, managing or leasing a Cable System or any components thereof in the Public Rights-of-Way within the state or any person seeking a Franchise to do so.

"Cable Service" shall mean (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services; and shall also include any video programming service for which a franchise from a local government is required under state law.

"Cable System" shall refer to a facility that is a "cable system" under federal law or a cable communications system under state law. The foregoing definition shall not be deemed to circumscribe or limit the valid authority of the Member Cities to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law.

"Franchise" shall mean any nonexclusive authorization granted by each of the Member Cities in the form of a Franchise, privilege, permit, license or other municipal authorization to construct, own, control, operate, maintain, or manage a Cable System within the Public Rights-of-Way to provide Cable Service within a Member City.

"Institutional Network" shall mean a communications network constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

"Policies and Procedures" shall mean these policies and procedures governing the Commission's processing of Applications for Franchises. "Public Rights-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within a Member City in which the Member City now or hereafter holds any property interest, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a Cable System. No reference in these Policies and Procedures to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by a Member City that its interest in or other right to control the use of such property is sufficient to permit use of the property for the purpose of installing, operating and maintaining a Cable System.

"Subscriber" shall mean any person or entity who receives cable service via a Cable System.

## **Section 2. Applicability of Policies and Procedures**

These Policies and Procedures apply to every Cable System and every Cable Company, including a Cable Company which constructs, operates and/or maintains a Cable System or

provides Cable Service in whole or in part through facilities owned, controlled, managed or operated by another provider, that seeks to operate within the territorial limits of one or more Member Cities.

Authority: Minn. Stat. § 238.03

### **Section 3. Franchise Requirement**

Subd. 1. In accordance with state and federal law, each of the Member Cities requires a Franchise of any Cable Company or Cable System providing Cable Service within its territorial limits.

Subd. 2. Nothing in these Policies and Procedures shall be construed to limit the Member Cities' or the Commission's authority to construct, purchase, and operate a Cable System or otherwise provide any telecommunications or Cable Services either for internal purposes or for sale to the public. Rather, these policies are meant to govern the process for issuing a franchise for Member Cities so long as they are part of the Commission.

Authority: Minn. Stat. § 238.08

### **Section 4. Application for Franchise**

Subd. 1. On its own initiative, should the Commission determine it is in the interests of Member Cities to seek Franchise Applications, or in the event a Member City or the Commission receives notice that a Cable Company is interested in applying for a Franchise in a Member City, the Commission shall publish a notice of intent to Franchise within a reasonable time and in accordance with Minn. Stat. § 238.081, Subd. 1, which requires publishing notice of intent to Franchise each week for two successive weeks, allowance of 20 days from initial publication for submission of Applications and a public hearing at least seven days before introduction of the Franchise into proceedings of a Member City.

Subd. 2. Review of Applications. Applications for a competitive Franchise shall contain such information as is required below in these Policies and Procedures and shall be submitted to the Commission. Review by the Commission of any Applications pursuant to these Policies and Procedures and final determination by the Member Cities regarding whether to Franchise such Applicant(s) may be based on any relevant factors. Such relevant factors include any factor that the Commission is required to consider under state or federal law, and may include any other factor the Commission is permitted to consider, including the quality and capabilities of the Cable System that will be constructed; whether the application satisfies cable-related needs and interests of the community, as identified by the Member Cities and the Commission, whether the application adequately provides for capacity, facilities, equipment or financial support for public, educational and government (PEG) use of the system (including institutional network use); whether the applicant is financially, technically and legally able to perform; whether the application evinces an intent to improperly discriminate or deny service to any person, group or persons; and whether the grant is otherwise in the interest of the public.

Subd. 3. Public Hearing on Applications. A public hearing before the Commission affording reasonable notice and a reasonable opportunity to be heard with respect to an Application shall be scheduled in accordance with Minn. Stat. § 238.081, Subd. 6. The Commission may schedule additional hearings as may be appropriate prior to action on an application.

Subd. 4. Negotiation of Franchise Terms. During the period prior to the public hearing on the Application(s), the responsible Commission employee(s) and Applicant(s) may negotiate specific Franchise terms and conditions for recommendation and presentation to the Commission and ultimately the Member Cities. In addition, during this period the responsible Commission employee(s) shall review the Application(s) and may request such additional information necessary to make final recommendations to the Commission and ultimately the Member Cities.

Subd. 5. Determinations. Determinations by the responsible Commission employee(s) regarding the qualifications of Applicant(s) and recommendations to the Member Cities regarding grant of a Franchise shall be made based on information provided by the Applicant(s) as required herein and such other information relevant to consideration of the Application. The responsible Commission employee(s) may, in their sole discretion, consider information developed during any negotiations with the Applicant(s) and any information or evidence adduced by the incumbent Cable Company. After the public hearing referenced in Subd. 3, the responsible Commission employee(s) shall issue written recommendations to the Commission for review and possible transmittal to the Member Cities. These recommendations may include Franchise documents to be potentially recommended to the Member Cities for adoption. If Franchise documents have not been negotiated, or the Commission determines that additional or different terms and conditions are appropriate, Commission may direct responsible employees to engage in further negotiations, and to require preparation of revised recommendations and reports. The Commission will adopt final recommendations for transmittal to Member Cities.

Subd. 6. Award of Franchise. A Franchise may be awarded only by an ordinance adopted by each Member City.

Subd. 7. Costs of Reviewing Application and Issuing Franchise. The Applicant shall pay the Application Fee required below. The Application Fee is required for the purpose of reimbursing the Member Cities and the Commission for all costs associated with processing Applications pursuant to these Policies and Procedures through and including any granting of a Franchise. Any portion of the Application Fee which remains after payment of all the Member Cities' and the Commission's costs will be reimbursed to the Applicant. Should the Application Fee not cover the expenses of the Member Cities and the Commission, those unreimbursed expenses shall be reimbursed prior to any consideration of the Franchises by the Member Cities. A successful Applicant shall be fully responsible to reimburse the Member Cities and the Commission for all costs of awarding the competitive Franchises(s).

Subd. 8. Franchising Nonprofit or Municipally-owned System. Nothing contained in this Section prohibits the Member Cities from franchising a nonprofit or municipally-owned system. The municipality or nonprofit entity shall be considered an Applicant subject to these Policies and Procedures.

Subd. 9. Time for Action. The Commission shall conduct proceedings in a manner that comports with state and federal law, as may be applicable.

Authority: Minn. Stat. § 238.081

## **Section 5. Information Required in Application**

An Application for a competitive Franchise must be signed by an authorized officer or principle of the Cable Company and be notarized and must include at least the following. To

the extent that an Application includes a proposed Franchise and other proposed agreements that provide the information requested, the Application may reference the relevant portion of those documents:

- (1) A statement that the Applicant seeks to construct a Cable System and to provide Cable Services within specifically identified Member Cities;
- (2) The name, street address, e-mail address and telephone number of the individuals who are authorized to provide and certify information on behalf of the Applicant;
- (3) a description of the technology that will be utilized by the Cable System to deliver Cable Services; the total bandwidth that initially will be used for delivery of Cable Services from the curb to the home; the total activated channel numbers that will be available to subscribers initially; the number of unique linear programming services that will be available in each format offered (e.g., SD, UHD, HD, 3D) (and whether there are limits as to the number of channels that may be viewed simultaneously); and to the extent relevant, plans for analog and digital channel capacity, including both the total number of analog and digital channels capable of being energized in the system and the number of analog and digital channels to be energized immediately;
- (4) a statement of the television and radio signals for which permission to carry will be requested from the Federal Communications Commission, or any other required regulatory agency;
- (5) to the extent not included in response to Subdivision 5(3), a description of the proposed system design and planned operation, including at least the following items:
  - (i) the general area for location of antennae and the head end, or description of programming delivery plan if otherwise;
  - (ii) the schedule for activating two-way capacity and any other system capacity to be activated in conjunction with the Cable System; the type of automated services to be provided;
  - (iv) the minimum number of video channels, other Cable Services, and other kinds of services to be made available to residents;
  - (v) the number and type of channels and services to be made available for community/access programming including a description of differences in the quality, accessibility, recordability or functionality of PEG channels as compared to linear broadcast channels; whether the channels would be available to every subscriber, or only subscribers to certain packages; whether any special equipment is required to view the PEG channels; and whether there are any charges to PEG programmers or Member Cities proposed with respect to PEG; whether signals would be carried in HD or SD or simulcast; and any video on demand provided; and
  - (vi) a plan for provision of facilities and equipment for PEG (including transport paths from points of signal origination to the subscriber), and funding of PEG and/or a plan for interconnection and provision of such programming in cooperation with the incumbent Cable Company;

- (6) plans for the provision of an Institutional Network and capacity for public, educational and government use of an Institutional Network, or an alternative proposed method for providing for the same;
- (7) any other facilities, services, equipment or financial support that applicant proposes to provide (such as courtesy service drops to schools or public buildings) in addition to the support described above and the franchise fee described below;
- (8) a comparison of the Applicant's proposal for PEG use (including institutional network use) as compared to requirements in existing franchises regarding PEG use; and whether (and why) Applicant contends that its proposal, if accepted would be no more favorable, or less burdensome than the requirements in the existing franchise.
- (9) a schedule of proposed rates in relation to the services to be provided, and a proposed policy regarding unusual or difficult connection of services;
- (10) a time schedule for construction of the system with the time sequence for wiring the various parts of the areas to be served. This information should be shown on a map, and the map should clearly show any area identified in the request for proposals for which the applicant does not seek a franchise. Conditions or limitations on the construction of the system to serve the entire proposed franchise area should be noted;
- (11) information supporting and indicating the Applicant's financial, technical and legal qualifications and experience in the cable communications field, if any;
- (12) an identification of the municipalities in which the Applicant either owns or operates a Cable System, directly or indirectly, or has outstanding Franchises for which no system has been built;
- (13) detailed plans for financing of the proposed system, which must indicate every significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources of capital;
- (14) a statement of ownership detailing the corporate organization of the Applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director, and intracompany relationship including a parent, subsidiary or affiliated company;
- (15) a statement of a form and substance acceptable to the Member Cities and the Commission indemnifying the Member Cities and the Commission fully against any claims or liabilities alleged as the result of the Member Cities' and the Commission's exercise of these Policies and Procedures, including any such claims or liabilities alleged or asserted by the incumbent Cable Company;
- (16) an agreement to pay the Member Cities and/or the Commission a Franchise fee in the same percentage of gross revenues as the incumbent providers, and on the same base;
- (17) the proposed Franchise term;

- (18) whether Applicant is willing to agree to terms required under state law, and if not, the terms to which it objects, the basis for the objection, and how it proposes to address the state law requirement, if at all;
- (19) a notation and explanation of omissions or other variations with respect to the requirements of the Application; and
- (20) submission of an Application Fee in the amount of \$40,000.
- (21) Such other information as may be required under state law.
- (22) If the Applicant claims that the Application is submitted pursuant to, and is subject to the deadlines for action under FCC regulations governing issuance of competitive franchises, the Application must so state clearly, and shall also include all information required by federal law.

Authority: Minn. Stat. § 238.081, Subd. 2 and 4.