



STAFF REPORT

DATE: March, 4 2020
REGULAR

AGENDA ITEM: Preliminary Denial of Comcast Cable Franchise Renewal
SUBMITTED BY: Jake Dickson, Assistant City Administrator

BACKGROUND:

The Ramsey/Washington Counties Suburban Cable Communications Commission (RWSCC) was created in 1981 with a mission to perform the cable franchising process on behalf of 11 northeast suburban municipalities. In 1999 the Commission and cable company implemented a renewed franchise agreement that is set to expire. The Council has approved extensions over the past few years to facilitate the negotiation of the franchise through an informal renewal process as per federal code. The Commission and Comcast could not come to a mutually acceptable agreement and the Commission initiated the formal renewal process last fall and issued a formal Request for Renewal Proposals. The RWSCC recently passed a resolution of preliminary assessment that the current franchise agreement not be renewed. The Commission's grounds for the preliminary assessment are attached to this report.

ISSUE BEFORE COUNCIL:

Should the Council preliminarily deny the renewal of the Comcast Cable Franchise?

PROPOSAL:

The Cable Commission is recommending that member cities adopt the attached resolution. This resolution is only a preliminary denial and not a final decision. The adoption of this resolution by member cities will allow negotiations to continue to their next step which is an administrative hearing as per federal law. The franchise renewal will ultimately come back to the City Council.

At the time of this report White Bear Lake, Birchwood Village, Oakdale, and Mahtomedi passed resolutions approving the preliminary denial of the Comcast Cable Franchise Renewal.

RECOMMENDATION:

Staff recommends the following motion:

“Motion to approve Resolution 2020-025 Approving the Preliminary Assessment That The Comcast of Minnesota, Inc. Cable Franchise Should Not Be Renewed.”

ATTACHMENTS:

- Cable Commission Memo and Executive Summary of Grounds for Preliminary Assessment hat Comcast Cable Franchise Should Not Be Renewed
- Resolution 2020-25 “Preliminary Assessment That The Comcast of Minnesota, Inc. Cable Franchise Should Not Be Renewed”

**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

**RESOLUTION 2020-025
PRELIMINARY ASSESSMENT THAT THE COMCAST OF MINNESOTA, INC.
CABLE FRANCHISE SHOULD NOT BE RENEWED**

WHEREAS, The City of Lake Elmo is a member of the Ramsey/Washington Counties Suburban Cable Communications Commission II (hereinafter “RWSCC”) a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59, as amended, and includes the municipalities of Birchwood, Dellwood, Grant, Lake Elmo, Mahtomedi, North St. Paul, Oakdale, White Bear Lake, White Bear Township and Willernie, Minnesota (“Member Municipalities”);

WHEREAS, the Member Municipalities enacted separate ordinances and entered into individual agreements authorizing MediaOne North Central Communications Corp. to provide cable service (collectively, the “Franchises”);

WHEREAS, as a result of several transfers of the Franchises, Comcast of Minnesota, Inc., (“Comcast”) currently holds the Franchises in the Member Municipalities;

WHEREAS, Section 626(a)(1) of the Cable Communications Policy Act of 1984, as amended (the “Cable Act”), 47 U.S.C. § 546(a)(1), provides that if a written renewal request is submitted by a cable operator during the 6-month period which begins with the 36th month before franchise expiration and ends with the 30th month prior to franchise expiration, a franchising authority shall, within six months of the request, commence formal proceedings to identify the future cable-related community needs and interests and to review the performance of the cable operator under its franchise during the then current franchise term;

WHEREAS, Comcast invoked the formal renewal procedures set forth in Section 626 of the Cable Act, 47 U.S.C. § 546;

WHEREAS, the Joint Powers Agreement empowers the Commission and/or its designee(s) to conduct the Section 626 formal franchise renewal process on the Member Cities’ behalf and to take such other steps and actions as are needed or required to carry out the formal franchise renewal process;

WHEREAS, the Commission commenced formal franchise renewal proceedings under Section 626(a) of the Cable Act, 47 U.S.C. § 546(a), and authorizing the Commission or its designee(s) to take certain actions to conduct those Section 626(a) proceedings;

WHEREAS, RWSCC performed a needs assessment of the Member Municipalities’ and their communities’ present and future cable-related needs and interests and has evaluated and continues to evaluate Comcast’s past performance under the Franchises and applicable laws and regulations, all as required by Section 626(a) of the Cable Act, 47 U.S.C. § 546(a);

WHEREAS, the Commission’s needs ascertainment and past performance review included the

Report on Cable-Related Needs and Interests and System Technical Review Within the Ramsey Washington Suburban Cable Commission Franchise Area, dated August 30, 2017, by CBG Communications, Inc.; Constance Ledoux Book, Ph. D., Telecommunications Research Corporation; Carson Hamlin, Media Integration Specialist; and Issues and Answers Telephone Research Firm (“CBG Report”); and in addition, the Commission reviewed its own files and conducted certain investigations as to needs and interests and past performance, and drew upon publicly available information regarding industry and area trends;

WHEREAS, based on its needs ascertainment and past performance review, RWSCC staff prepared a “Request for Renewal Proposal for Cable Franchise” (“RFRP”) that summarizes the Member Municipalities' and their communities' present and future cable-related needs and interests, establishes requirements for facilities, equipment and channel capacity on Comcast's cable system and includes model provisions for satisfying those requirements and cable-related needs and interests; that identified past non-compliance issues, and provided Comcast a further opportunity to correct them; and included a model franchise with terms and conditions;

WHEREAS, RWSCC and Comcast engaged in informal renewal negotiations pursuant to 47 U.S.C. § 546(h) but are currently unable to arrive at mutually acceptable terms;

WHEREAS, RWSCC established November 11, 2019 as a deadline for Comcast's response to the RFRP;

WHEREAS, RWSCC and Comcast agreed to extend certain deadlines including the deadline for Comcast to respond to the RFRP; and on or about December 13, 2019, Comcast submitted to RWSCC its Response to Ramsey Washington Counties Suburban Cable Communications Commission II's Request for Renewal Proposal for Cable Franchise (“Comcast Proposal”);

WHEREAS, RWSCC reviewed the Comcast Proposal and based on that review made a preliminary assessment that the Franchises should not be renewed, as set forth in Resolution 2020-01, (“RWSCC Resolution”) and recommended that each Member Municipality confirm and issue a preliminary assessment that the franchise not be renewed;

WHEREAS, RWSCC has proposed Rules for the Conduct of an Administrative Hearing, attached to the RWSCC Resolution as Exhibit B and asked each Member Municipality to confirm those rules.

NOW THEREFORE BE IT RESOLVED BY THE CITY OF LAKE ELMO.

Section 1. The City of Lake Elmo hereby issues a preliminary assessment that the franchise should not be renewed, and the actions of the RWSCC affirmed.

Section 2. Exhibit A to the RWSCC Resolution is adopted and incorporated herein, and sets out grounds for the preliminary denial, and the which of the categories of issues set out in 47 U.S.C. § 546(c)(1) may be raised in any formal administrative proceeding.

Section 3.

Exhibit B, the Rules for Conduct of an Administrative Hearing are confirmed and may be used for conduct of the proceeding. To remove any doubt, the RWSCC is authorized to make such changes to the Rules as may be necessary or appropriate for the conduct of the proceeding without seeking further authorization from The City of Lake Elmo.

Section 4. RWSCC shall provide such notices as may be required and promptly commence the administrative proceeding required by law.

Section 5. The proceeding maybe delayed by agreement, subject to ratification by the Member Municipalities. The proceeding may be terminated if an agreement is reached as to renewal, or if Comcast determines it does not wish an administrative hearing on its application

Adopted by the City Council of the City of Lake Elmo, Minnesota this 4th day of March, 2020.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

MEMORANDUM

February 4, 2020

TO: Kristina Handt, City Administrator, City of Lake Elmo

FROM: Tim Finnerty, Executive Director, Cable Commission

SUBJECT: Recommendation for Preliminary Assessment that the Comcast of Minnesota, Inc., Cable Franchise Should Not Be Renewed

Please find attached the recommendation of the Cable Commission that the City adopt a **preliminary assessment** that the cable franchise with Comcast should not be renewed.

It's important that this recommended action represents a PRELIMINARY ASSESSMENT. It is not a FINAL decision. This will simply trigger the next step, which is an administrative hearing that gives Comcast a fair opportunity, right to introduce and produce evidence, and question witnesses. That's what the federal law calls for. It's designed to provide due process to the parties, including Comcast. And it will determine what is reasonable and what is not reasonable under the law.

The attached documents include:

Analysis of Comcast's proposal, including the grounds for the preliminary assessment. The statement is not intended to lay out all the problems with the Comcast proposal, but is instead meant to provide enough information for the Member Municipalities to understand why the Cable Commission has found that the proposal is not adequate to support renewal at this point.

A recommended Resolution to Member Municipalities for adoption that issues a **preliminary assessment that the franchise should not be renewed**.

Recommended rules for conducting an administrative hearing for Comcast of Minnesota, Inc., franchise renewal. The rules are to be applied to ensure that Comcast is afforded a fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses.

The recommended hearing rules include a timeline for the schedule of proceedings, which assumes that all the member communities act on the Cable Commission's recommendation by March 10. The Cable Commission may be able to move faster if the communities act more quickly.

It is important to note that other documents are referenced, but not contained, within the attachments, include the following:

The Commission's Request for Renewal Proposal (RFRP) issued to Comcast in October, 2019; and Comcast's response in December, 2019, to that RFRP.

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These documents are available for public inspection at the Commission office, and can also be found at the following link: <https://drive.google.com/drive/folders/1gaFIAPBPFiTrjRW5WXGX8LwBrOmG4ji9>

Also available at this link are the following:

A December 30, 2019, letter from Mr. Joe Van Eaton (representing the Cable Commission) to Mr. Anthony Mendoza (representing Comcast) regarding Comcast's response to the RFRP, as well as Mr. Mendoza's January 10, 2020 reply to that letter.

A January 30, 2020, letter from Mr. Anthony Mendoza (representing Comcast) to the Cable Commission.

An alternative draft resolution in the event your community wishes to accept Comcast's proposal. The Cable Commission DOES NOT recommend, but makes it available for your convenience if applicable.

Finally, the discussion of the grounds for the preliminary assessment refers to a financial analysis by consultant to the Cable Commission, Garth Ashpaugh. That report is confidential, but can be made available to authorized municipal officials – but the confidentiality of the specific information in that report should be respected. To make arrangements to view this material, please contact me.

Please contact me with any questions. Thank you.

Executive Summary of Grounds for Preliminary Assessment that Comcast Cable Franchise Should Not Be Renewed

Each community would be deciding whether to issue a preliminary assessment that the franchise should not be renewed. The communities would then conduct a formal hearing through the Cable Commission before making a final renewal decision.

1. Under the Cable Act, an operator's request for renewal can be denied unless an operator "has substantially complied with the material terms of the existing franchise and with applicable law;" and "the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs." The needs review showed that Comcast:

Failed to satisfy customer billing requirements.

Failed to properly maintain the system, and failed to devise an effective system for identifying and correcting maintenance problems.

(Separately, the company failed to provide information required by the renewal application form, and failed to respond to questions about its proposal or to pay application fee in connection with renewal application process).

2. Under the Cable Act, an operator's request for renewal can be denied unless an operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal. In addition, to be legally qualified, the company must accept legal conditions locality has a right to impose.

Cases suggest the refusal to correct maintenance problems (sloppy placement on poles, open boxes, wires on ground) indicates a company may not satisfy the technical standard.

Comcast refused to accept conditions that may be imposed as a condition of issuance of a franchise, and requires communities to accept conditions which they are not required to accept.

Comcast will not provide a local customer service office – its closest offices are a significant distance from subscribers. It did not agree to customer service conditions the communities may impose.

Comcast does not agree to pay full 5% franchise fee permitted by law; and it also does not preserve right to assess fees on non-cable revenues, even if permitted by state and federal law.

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Company insists on one-way, level playing field clause that is likely to require you to either give up franchise benefits, or deny franchises to others.

Company insists on incorporating an FCC Order, still under appeal, that would allow reduction of franchise fees.

3. Lastly, a renewal may be denied unless “the operator’s proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.” Among other things:

Comcast argues build out requirements are subject to a “needs and interest test.” It does not agree to build-out conditions that will ensure its system is available to residents and businesses throughout the communities.

While elsewhere, Comcast agrees to share the cost of extending its service to remote areas, if subscribers (or developers) are willing to pay share in extension costs, Comcast refuses to agree to cost-sharing in the RWSCC communities.

Comcast does not propose to upgrade its cable system.

The Cable Act allows localities to require operators to build “institutional networks” – part of the cable system designed to provide advanced communications services to small businesses, community organizations and other non-residential customers. An institutional network already exists. However, Comcast will not agree to provide or continue to provide an institutional network throughout the communities to serve local businesses.

The Cable act allows localities to require an operator to provide capacity on an institutional network for educational and government use. Instead, the company offers to maintain existing connections at a cost of over \$554,000 for a ten year period. Comcast elsewhere has agreed to maintain much larger “dark fiber networks” for under \$15,000 annually, and normal market prices for dark fiber maintenance could be one-tenth of the price Comcast proposed.

With respect to PEG, Comcast does not propose to maintain PEG channels with an appropriate option for adding a Century College channel, for example; it does not agree to terms that will ensure the quality of PEG that keeps pace with television technology, (company proposes only two High Definition channels, while other local channels to remain in old, standard definition format); it does not agree to

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provide a facility for PEG throughout the franchise term; and it does not propose adequate, other capital support going forward.

The Cable Commission's RFRP suggested a support level of about \$244,000, a **reduction** of PEG support as currently structured. However, Comcast proposed just half that amount and less (as a percentage of gross) than it provides in many communities. It would make it more difficult, and perhaps impossible to produce many live events, such as local high school sporting events.