

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

June 11, 2014

No. 14-12

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

WHEREAS, The City of Falcon Heights (the “City”), is a Member City of The North Suburban Cable Commission, d/b/a The North Suburban Communications Commission (the “Commission”), a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59, as amended, and includes the municipalities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony, and Shoreview, Minnesota (hereinafter, collectively the “Member Cities”); and

WHEREAS, a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59 has the statutory authority to “jointly or cooperatively exercise any power common to the contracting parties i.e., the Member Cities;” and

WHEREAS, the Commission was established by the Amended North Suburban Cable Commission Joint and Cooperative Agreement for the Administration of a Cable Communications System, dated June 1990 (the “Joint Powers Agreement”), to monitor Comcast’s performance, activities and operations under the Franchises and to coordinate, administer and enforce the Member Cities’ Franchises, among other things; and

WHEREAS, The North Suburban Communications Commission acts on behalf of its Member Cities, including the City, to monitor the operation and activities of cable communications and to provide coordination of administration and enforcement of the franchises of the Member Cities; and

WHEREAS, the City enacted an ordinance and entered into an agreement authorizing MediaOne North Central Communications Corp. to provide cable service (the “Franchise”); and

WHEREAS, as a result of several transfers of the Franchise, Comcast of Minnesota, Inc., (“Comcast”) currently holds the Franchise in the City; and

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; and

WHEREAS, by letters dated October 11, 2010, and November 23, 2010, from Comcast to each of the Member Cities, including the City, Comcast invoked the formal renewal procedures set forth in Section 626 of the Cable Act, 47 U.S.C. § 546; and

WHEREAS, the City and the other Member Cities informed the Commission, by resolution, that they want the Commission and/or its designee(s) to commence, manage and conduct the formal renewal process specified in Section 626(a)-(g) of the Cable Act, 47 U.S.C. § 546(a)-(g), on their behalf; and

WHEREAS, the City has affirmed, by resolution, the Commission's preexisting authority under the Joint Powers Agreement to take any and all steps required or desired to comply with the Franchise renewal and related requirements of the Cable Act, Minnesota law and the Franchises; and

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

WHEREAS, the Commission adopted Resolution No. 2011-02 commencing 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; and

WHEREAS, the Commission performed a detailed needs assessment of the Member Cities' 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); and

WHEREAS, the Commission's needs ascertainment and past performance review produced the following reports: The Buske Group's "Community Needs Ascertainment – North Suburban Communications Commission (Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview, Minnesota)" (July 15, 2013) (the "*Needs Assessment Report*"); Group W Communications, LLC's, telephone survey and report titled "North Suburban Communications Commission Cable Subscriber Survey (September 2011)" (the "*Telephone Survey Report*"); CBG Communications, Inc.'s, "Final Report - Evaluation of Comcast's Subscriber System, Evaluation of the Existing Institutional Network and Evaluation of PEG Access Signal Transport and Distribution for the North Suburban Communications Commission" (July 2013) (the "*Technical Review Report*"); Front Range Consulting, Inc.'s, "Financial Analysis of Comcast Corporation 2012 SEC Form 10K" (May 2013) (the "*Comcast Financial Report*"); and Commission staff's "Report on Cable-Related Needs and Interests and the Past Performance of Comcast of Minnesota, Inc.," (July 22, 2013) (the "*Staff Report*"); and

WHEREAS, based on its needs ascertainment, past performance review, best industry practices, national trends in franchising and technology, and its own experience, Commission

staff prepared a “Request for Renewal Proposal for Cable Television Franchise” (“RFRP”) that summarizes the Member Cities’ 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; and

WHEREAS, pursuant to Resolution No. 2013-04, the Commission authorized its Executive Committee, Franchise Renewal Committee, Commission staff and/or Commission designee(s) to take all steps and actions necessary to implement, conduct and engage in the entire formal franchise renewal process set forth in Section 626(a)-(g) of the Cable Act, 47 U.S.C. § 546(a)-(g), and to comply with any and all related federal, state and local laws, regulations, ordinances, orders, decisions and agreements; and

WHEREAS, the Commission’s delegation of authority to the Franchise Renewal Committee includes, but is not limited to, the issuance of a staff report and RFRP and the establishment of appropriate deadlines for questions and Comcast’s RFRP response; and

WHEREAS, in accordance with the authority delegated by the Commission, the Franchise Renewal Committee, by resolution, terminated the Section 626(a) proceedings required by the Cable Act on July 26, 2013, issued the *Staff Report* and RFRP to Comcast, effective July 29, 2013, and instructed Commission staff to deliver the *Staff Report* and RFRP to Comcast no later than July 30, 2013; and

WHEREAS, the *Staff Report* and RFRP was delivered to Comcast on July 29, 2013; and

WHEREAS, the Commission ratified the issuance of the *Staff Report* and RFRP by the Franchise Renewal Committee at its August 2013 meeting; and

WHEREAS, the Commission 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, although informal discussions are ongoing; and

WHEREAS, the Commission established November 22, 2013, as a deadline for Comcast’s response to the *Staff Report* and RFRP; and

WHEREAS, the Commission and Comcast agreed to extend certain deadlines including the deadline for Comcast to respond to the *Staff Report* and RFRP and the deadline set forth in 47 U.S.C. 546(c) for the Commission and the Member Cities to accept or preliminarily deny the Comcast Proposal; and

WHEREAS, on or about December 20, 2013, Comcast submitted to the Commission its Formal Proposal in response to the *Staff Report* and RFRP (“Proposal”); and

WHEREAS, the Commission published a notice notifying the public that Comcast’s Proposal has been received and was placed on file for public inspection in the Commission’s office, and that written public comments may be submitted to the Commission; and

WHEREAS, the Commission held a public hearing on April 17, 2014, and May 1, 2014, on the Comcast Proposal; and

WHEREAS, Comcast's proposal was analyzed by the Commission's staff, The Buske Group, CBG Communications, Inc., and Front Range Consulting, Inc., each of whom prepared a separate Executive Summary of Comcast's Proposal, which are all attached hereto and incorporated herewith as **Exhibit A** to Attachment 1 (collectively the "Executive Summary Reports"); and

WHEREAS, the Executive Summary Reports identify with particularity whether Comcast's Proposal is acceptable or unacceptable as it relates to the Commission's *Staff Report* and RFRP; and

WHEREAS, the Commission carefully reviewed Comcast's Proposal and determined a number of areas where the Proposal fails to meet the future cable-related community needs and interests taking into account the cost of meeting such needs and interests; and

WHEREAS, should Comcast request the commencement of an administrative hearing pursuant to 47 U.S.C. § 546(c), the Commission has prescribed Rules for the Conduct of an Administrative Hearing, attached hereto as **Exhibit B** to Attachment 1, which rules comply with all procedural obligations set forth in 47 U.S.C. § 546(c); and

WHEREAS, the Commission carefully considered all public comment including that contained within the *Staff Report* and RFRP, the Proposal and the attached analysis; and

WHEREAS, the Commission, on May 15, 2014, adopted a resolution, attached hereto as **Attachment 1**, recommending to the Member Cities that the Member Cities issue a preliminary assessment that the Comcast Franchises should not be renewed.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FALCON HEIGHTS THAT:

1. Each of the above recitals is hereby incorporated as a finding of fact by the City.
2. Attachment 1 and its Exhibits A and B are hereby incorporated by reference as if fully set forth in the body of this Resolution.
3. The City makes a preliminary assessment that the Comcast Franchises should not be renewed.
4. The City preliminarily finds that Comcast's Proposal fails to meet the Commission and the City's future cable-related community needs and interests taking into account the cost of meeting such needs and interests.
5. The basis for the City's preliminary assessment is set forth in Attachment 1, Exhibit A.

6. At any administrative hearing requested by Comcast, the Rules for the Conduct of an Administrative Hearing attached hereto as Attachment 1, Exhibit B will 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.
7. The City finds that its actions are appropriate and reasonable in light of the mandates contained in federal law including 47 U.S.C. § 546.

Moved by: Long

Approved by: Peter Lindstrom
Peter Lindstrom
Mayor
June 11, 2014

LINDSTROM 4 In Favor
GOSLINE
HARRIS 0 Against
LONG
MERCER-TAYLOR (Absent)

Attested by: Bart Fischer
Bart Fischer
City Administrator
June 11, 2014

ATTACHMENT 1

NSCC May 15, 2014 Resolution

ATTACHMENT 1, EXHIBIT A

**ANALYSIS OF COMCAST'S CABLE PROPOSAL
TO THE NORTH SUBURBAN COMMUNICATIONS COMMISSION**

Commission's staff, Supplemental Staff Report on
*The Comcast Formal Proposal for Renewed Franchises
with the NSCC Member Cities*

CBG Communications, Inc.
*Executive Summary of CBG Communications, Inc.'s
Report on the Technical Aspects of Comcast's Formal Renewal Proposal*

The Buske Group
*Executive Summary, Review of Public, Educational, and Government (PEG) Access Aspects
of Franchise Renewal Proposal Submitted By Comcast of Minnesota*

Front Range Consulting, Inc.
Executive Summary, FRC's Review of Comcast's Formal Renewal Proposal

ATTACHMENT 1, EXHIBIT B

RULES FOR CONDUCTING ADMINISTRATIVE HEARING FOR COMCAST OF MINNESOTA, INC., FRANCHISE RENEWAL

Section 1. The Commission hereby establishes procedural guidelines for purpose of the administrative hearing under the Cable Communications Policy Act of 1984 as follows:

A. The Commission shall appoint an administrative law judge (“hearing officer”) to conduct the administrative hearing and issue recommended findings of fact for consideration by the Commission. Comcast and the Commission will jointly determine the process for selecting an administrative law judge, if necessary. The administrative hearing will be conducted, to the extent practicable and consistent with the requirements of the Cable Communications Policy Act of 1984, pursuant to the provisions for administrative hearings in the Minnesota Administrative Procedures Act. The specific requirements for the administrative hearing shall be as follows:

B. Pre-hearing Discovery:

- (1) Each side is permitted limited requests for production of documents and twenty (20) interrogatories. With respect to interrogatories, the following rules apply:
 - (a) Interrogatories are to be answered by any officer or agent of either party, who shall furnish such information as is available to the party; and
 - (b) Each interrogatory is to be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for the objection and answer to the extent that the interrogatory is not objectionable. All objections shall be stated with specificity and any ground for objection which is not stated in a timely manner is waived unless the party’s failure is excused by the Commission for good cause shown; and
 - (c) Interrogatories will be answered within the timeframe established by the hearing officer;
- (2) No depositions shall be permitted.
- (3) The hearing officer will rule on all discovery disputes which may arise.
- (4) Discovery shall close fifteen (15) days before the administrative hearing.

C. Pre-hearing Disclosures:

- (1) Each side shall disclose to the other the identity of any person who may be used at the hearing to present expert testimony prior to the hearing date. The disclosure must be accompanied by a written report prepared and signed by the expert which shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert informing his or her opinions; and any exhibits to be used as a summary or in support of the opinions so rendered; the qualifications of the witness; the compensation to be paid for the study and testimony of the expert; and a listing of other cases in which the expert has testified at trial within the preceding four (4) years.
- (2) Exhibits and witness lists will be mutually exchanged one (1) week prior to hearing date. Witness lists will briefly state the subject of the expected testimony of each witness.

D. Administrative Hearing:

- (1) The hearing will be conducted on a date established by the hearing officer;
- (2) Each side may be represented by an attorney and shall be afforded the opportunity to present relevant evidence and to call and examine witnesses and cross-examine witnesses of the other party;
- (3) Commission members may not be called as witnesses nor may the Commission's or Comcast's legal counsel be called as witnesses.
- (4) Witnesses will be sworn;
- (5) The hearing shall be transcribed by a court reporter;
- (6) The hearing officer will determine evidentiary objections. Strict compliance with the federal rules of evidence will not be necessary.
- (7) Post-hearing briefs will be permitted in lieu of closing argument. Briefs will be mutually exchanged at a date established by the hearing officer;
- (8) The hearing officer will issue recommended findings of fact based upon the record of the proceeding and stating the reasons therefore, pursuant to the Cable Communications Policy Act of 1984, as amended.

- E. The Commission will review the recommended findings of fact from the hearing officer and will, upon request of the parties, permit oral argument

before the Commission not to exceed thirty (30) minutes per party. Thereafter the Commission will issue a written decision recommending to the Member Cities to grant or deny the proposal for renewal pursuant to the Cable Communications Policy Act of 1984, as amended.

Section 2. Neither the Commission's July 29, 2013, Staff Report and RFRP or Comcast's December 20, 2013, Proposal have been amended nor modified in any way since the dates submitted.

Section 3. The Commission finds that its actions are appropriate and reasonable in light of the mandates contained in federal law including 47 U.S.C. § 546.

END OF DOCUMENT