



Comcast Franchise Renewal

Northern Dakota County Cable Communications Commission (NDC4)

August 5, 2020

Brian T. Grogan, Esq.

(612) 877-5340

www.lawmoss.com

What are we here to consider?

- **After more than 5 years of effort we have a draft franchise for consideration!**
- **Joint Powers Agreement**
 - Commission to recommend franchise renewal document to Member Cities
 - Requires affirmative vote of 2/3 of total eligible weighted votes
 - If Commission approves draft franchise
 - Each of the Member Cities will consider franchise at City Council meeting
 - Process may take additional 6 weeks to complete
 - If approved, Comcast executes the 7 franchises



Timeline – how did we get here?

April 2000

- Comcast franchise granted

August 2012

- Comcast requests renewal
- Formal and informal

2013 and 2014

- NDC4 comprehensive needs assessment

Early 2014

- Commission commences informal renewal negotiations

June 2014

- Comcast proposes to transfer franchise



Timeline

February 2015

- CenturyLink applies for competitive franchise

March 2015

- Initial term of Comcast franchise expires
- NDC4 Member Cities grant extension
- First of 6 extensions of franchise term

April 2015

- Comcast terminates transfer request

March 2016

- CenturyLink granted franchises

Informal renewal negotiations with Comcast

Comcast Formal Renewal

February 2018

- The Commission directed staff to begin preparing “formal” renewal documents required under the Cable Act
- Commission prepared a Needs Report which includes:
 - Formal Needs Assessment Report
 - Request for Formal Renewal Proposal
 - Model Cable Television Franchise Ordinance

April 4, 2018 - Full Commission approved the Needs Report

August 15, 2018 - Comcast submitted its Formal Proposal to the Commission in response to the Needs Report

Comcast Formal Renewal

December 12, 2018

- Commission recommended that the Member Cities issue a preliminary assessment that the Comcast Formal Proposal should be denied and the Comcast Franchise should not be renewed

1st Quarter 2019

- The NDC4 Member Cities each voted to preliminarily deny Comcast's Formal Proposal
- LMCIT assigned litigation attorney
- Administrative Law Judge assigned
- Informal settlement meetings continued to run parallel to formal legal milestones

FCC 621 Order

- **Order Adopted** – August 2, 2019
- **Effective Date** - September 26, 2019
- **Reinterprets** - 35 year old Cable Act
- **Appeal of FCC 621 Order**
 - NDC4 and many others are parties to legal challenge
 - Decision on appeal not expected until spring of 2021, or later

FCC 621 Order

- **Nonmonetary franchise obligations – potential offset from FF**
- Valued at “**fair market value**”
 - Includes, but not limited to:
 - Free or discounted service to schools and public buildings
 - “Maintenance and use” for PEG transport
 - Does not include cost of construction
 - Institutional networks
 - Operator allowed to charge FMV
 - Separate network serving cities and schools
- **Excludes customer service and buildout franchise obligations**

FCC 621 Appeal

- **Cities ask “court” to issue Stay – December 4, 2019**
- **At the request of the Cable Industry**
 - FCC issues Order on Reconsideration - February 11, 2020
 - Deletes the language favorable to cities re franchise renegotiations
 - Appears to leave option for unilateral franchise fee deductions
- **6th Circuit denied Stay request – March 19, 2020**
- **Final decision on merits of case unlikely before 2021**



Key Terms of New Franchise

1. **10 year term**
2. **5% Franchise Fee**
 - a) Strong definition of “Gross Revenues”
 - b) Bundled services addressed
 - c) Payments due within 30 days of end of quarter – along with report showing computation
3. **Competitive Equity**
 - a) Protection for Comcast should cable service competitor enter market
4. **City Code incorporated**
 - a) ROW protections
 - b) Definition of “street”
 - c) Minnesota Rules referenced to address utility protections for ROW



Key Terms of New Franchise

5. **Performance Bond - \$100,000**
6. **Letter of Credit - \$25,000**
7. **Streamlined Enforcement Procedure**
8. **Strong Customer Service Standards**
 - a) FCC standards
 - b) Franchise obligations
 - c) Reporting obligations
 - i. Trade secret/confidentiality
 - ii. Subscriber statistics due 6 times per year (currently monthly)
 - iii. Telephone Service Level (TSL) due quarterly (currently monthly)

Key Terms of New Franchise

9. 7 PEG Channels

- a) Channel #s 14, 15, 16, 18, 19, 20 and 21
- b) Within 90 days of effective date
 - i. 5 SD and 2 HD PEG Channels provided
- c) 3rd HD PEG Channel provided January 1, 2022
 - i. Retain 5 SD PEG channels
- d) Upon 5th anniversary
 - i. Comcast can provide 90 days notice
 - i. Commission gives back 1 SD PEG Channel
 - ii. Resulting in 4 SD and 3 HD PEG channels
- e) If Comcast terminates SD channels and services
 - i. Comcast moves to all HD lineup
 - ii. After 90 days written notice to Commission
 - iii. Comcast will provide 4 HD channels

Key Terms of New Franchise

10. PEG Fee

- a) 2.25% of gross revenues
 - i. Existing PEG fee started at \$.83 – currently \$1.99
- b) Payment due quarterly to the Commission
 - i. PEG Fee is over and above 5% franchise fee
- c) PEG Fee to be used for PEG capital purposes
- d) Comcast can recoup additional PEG capital separate from PEG fee line item
 - i. Consistent with federal Cable Act and FCC regulations

Key Terms of New Franchise

11. PEG issues

- a) Transport and Interconnection
 - i. Other Twin Cities PEG stations by Prisma and C-RAN
 - ii. Satellite feeds
 - iii. Fiber backhaul for city halls
 - iv. Cable modem for truck
- b) Technical quality
- c) PEG monitoring – Commission office and 4 City Halls

Side Letter Agreement

Service to public buildings

- a) Impact by FCC 621 order
- b) Comcast has option to charge schools and public buildings for cable service
- c) If FCC order is overturned by Court - then complimentary service is restored.

Institutional Network

- a) Comcast will wind down I-Net
- b) Dark fiber through end of 2020
 - 4 Inver Grove Heights sites; and
 - 2 West St. Paul sites.
- c) Possible extension to 10/31/21
- d) \$330 per location for each additional month beyond the end of calendar year 2020.

Commission Consideration - Weighted Vote

Action on Recommended New Cable Franchise

- Requires “weighted vote”
- Approval by 2/3 of all eligible weighted votes – 30 votes

<u>Member City</u>	<u>Votes Per City</u>
Inver Grove Heights	12
Lilydale	2
Mendota Heights	6
Mendota	2
Sunfish Lake	2
South St. Paul	10
West St. Paul	<u>10</u>
TOTAL VOTES	<u>44</u>

Commission Staff and Outside Legal Counsel

Commission staff recommends adoption of resolution and approval to execute side letter with Comcast.



Questions?

Brian T. Grogan, Esq.

**Moss & Barnett, A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 877-5340 phone / (612) 877-5031 facsimile
E-mail: Brian.Grogan@lawmoss.com
Web site: www.lawmoss.com**