

To: **Mayor and City Council**
From: **Ryan Schroeder, City Manager**
Date: **September 1, 2020**

Final Reading of Ordinance No. 20-017 Approving Cable Franchise

BACKGROUND INFORMATION:

On August 31, 2020, the City Council was asked to consider adopting the Comcast Cable Television Franchise Ordinance (“Ordinance”) as recommended by the Northern Dakota County Cable Communications Commission (“Commission”) and approving a Summary of the Ordinance for publication in the newspaper of public record, and to consider authorizing the Commission to execute the mutually agreed-upon Side Letter with Comcast.

Reference Materials:

1. Resolution approved by the Commission at its August 5, 2020, meeting;
2. PowerPoint presentation provided by Brian Grogan, the Commission’s outside legal counsel;
3. Recommended Ordinance to be considered by the City;
4. Mutually agreed-upon side letter to be executed by the Commission and Comcast (“Side Letter”);
5. Recommended Summary of Ordinance for Publication in the newspaper of public record;

Background:

The current cable television franchise was adopted in 2000 and initially expired in 2015. In accordance with federal law, the franchise renewal process began in 2012. For a number of reasons including corporate mergers, application for a competing franchise by CenturyLink, and marketplace uncertainty caused by a new FCC Order, the renewal process was delayed several times, and multiple extensions of the current cable television franchise term were granted by the City.

The Commission is a Joint Powers Cooperative comprised of seven (7) Member Cities (Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake and West St. Paul, Minnesota). The Commission is authorized to negotiate, recommend, enforce, and administer the cable television franchise on behalf of the Member Cities, however, each individual Member City adopts a cable television franchise as a City Ordinance according to its own ordinance procedures.

In July of 2020, the Commission and Comcast came to mutual agreement on terms and conditions of a renewal franchise. On August 5, 2020, the Commission passed a resolution recommending adoption of the renewal franchise with strong support of all commissioners in attendance. Comcast is in full support of the recommended ten-year renewal franchise and has agreed to execute the franchise as soon as all seven Member Cities have adopted the Ordinance.

On August 19th, Member Cities Management Staff, IT Staff, and City Attorneys attended a briefing presented by the Commission’s Executive Director, Jodie Miller, the Commission’s outside legal

counsel, Brian Grogan of Moss & Barnett, and LMCIT-assigned litigation attorneys, John Baker and Katherine Swenson of Greene Espel. A summary of the presentation is included in the meeting materials.

The ten-year renewal franchise provides the continuation of the 5% of gross revenues franchise fee, and improves PEG fee funding from the per subscriber, per month flat fee to a PEG fee in the amount of 2.25% of gross revenues. The renewal franchise maintains strong customer service and rights-of-way protections, and enforcement tools including a bond and a letter of credit security fund. Resources for local PEG programming including channels, technical support, and funding for capital purchases are retained, and High Definition (HD) channels are available within 90 days of enactment. Most importantly, the Commission and Comcast found a mutual solution to continuing many of the non-cash requirements in the current franchise. Important technical support items such as transmission of live signals from city halls, connections with other metro area stations to share programming, and cable TV service at city halls and the Commission's office, will continue without the threat of a future deduction from franchise fee payments as allowed by the 2019 FCC "621 Order." The "winding down" of the fiber I-Net that was used by cities, school districts, and other institutional users under the current franchise, is covered within the attached side letter.

Budget Impact:

The Commission will continue to receive the franchise fee and PEG fee revenues from Comcast on behalf of the Member Cities. Under the Joint Powers Agreement, the Commission remits an annual payment of 25% of the franchise fees to each Member City in its proportionate share of the total subscriber base. The Commission and Town Square Television utilize 75% of the franchise fees and the PEG fee revenues to provide PEG programming and franchise administration to the community on behalf of the Member Cities.

Cable television subscribership has gradually declined over the past few years with the changes in the marketplace and video viewing trends. This ten-year renewal franchise will provide some certainty and a stabilization of the PEG fee capital funding as Town Square Television and the Commission work on strategic planning for sustainability, assuming that the traditional cable video market transitions to an all-internet industry.

Recommendation:

The City Council follow the recommendation of the Commission, including the two Commission Representatives, WSP Council Representative John Justen and WSP Citizen Representative Jane Zaspel, by approving the attached Ordinance.

Action Required:

If the City Council concurs, it should by motion, direct the following:

1. Hold final reading of the attached Ordinance No. 20-017
2. Approve the attached Summary of Ordinance for publication in the newspaper of public record after the second reading; and
3. Authorize the Commission to execute the attached Side Letter with Comcast.

STAFF RECOMMENDATION:

Hold a final reading of the proposed ordinance.