ROSEVILLE

REQUEST FOR COUNCIL ACTION

Date: June 16, 2014
Item No.: 13.b

Department Approval | City Manager Approval

Item Description: Consider Renewal of Comcast of Minnesota, Inc. Cable Franchise

BACKGROUND

The City of Roseville is part of the North Suburban Communications Commission (NSCC), a joint power organization that oversees the operation of the cities' cable franchises in the area. There are ten cities that are part of the NSCC (Roseville, Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, St. Anthony, and Shoreview). The NSCC acts on behalf the member cities to enforce and administer the member cities' franchises and monitor the overall performance of the cable franchisee with their customers.

Additionally, the ten cities jointly established the North Suburban Access Corporation (NSAC), which is as a separate and distinct non-profit corporation for the purpose of managing and operating the community access programming, channels, equipment, and facilities resulting from the existence of the cable franchise agreements of the 10 member cities. The NSAC operates CTV's media center on Arthur Street in Roseville, which provides training on video production to the communities, equipment for local volunteer producers to produce their programs, and staffing and services to physically program the access channels of CTV and many of the member cities and school districts.

The existing cable franchise with Comcast is set to expire in November 2014, after a 1-year extension that was agreed between the cities and Comcast in 2013 to allow more time for the renewal process. Based on a Request for Franchise Renewal Proposal (RFRP) created by the NSCC, Comcast submitted a proposal to the cities for consideration in December 2013. The NSCC has reviewed the proposal and held of the required public hearing on the proposal this spring. On May 15, 2014, the NSCC adopted a resolution recommending that the member cities of the NSCC issue a preliminary assessment that the Comcast franchise should not be reviewed.

As set forth in the relevant laws, city action on Comcast's formal proposal must be taken by June 20.

In addition to considering this formal proposal from Comcast, the cities, through NSCC, continue to work toward an informal negotiated franchise renewal agreement with Comcast.

Representatives from the NSCC and Comcast will be in attendance to provide information about their respective positions regarding the Comcast proposal and answer any questions the City Council may have.

POLICY OBJECTIVE

A cable franchise agreement allows for managed use of right-of-way to benefit the community. The franchise agreement provides resources to the City in exchange for the use of City right-of-way, including the ability to transmit public, educational, and governmental (PEG) programming. The agreement also allows residents and businesses to receive cable tv and other technologies from Comcast.

BUDGET IMPLICATIONS

The City receives a franchise fee annually from Comcast for the use of City right-of-way. The current expiring annual franchise fee payment to the City under the existing franchise agreement is approximately $425,000 annually, which is based on 5% of the revenue generated from the customers within Roseville. Approximately $98,000 (or about 23%) of that amount is paid by the City to the NSCC each year as a fee for providing the franchise administration services for the City. The formal proposal from Comcast maintains the 5% franchise fee (the maximum allowed under federal law).

In addition to the franchise fee paid to the City, the current expiring cable franchise agreement includes a PEG fee of $4.15/month/cable subscriber, which is paid by Comcast directly to NSAC, and supports both the operational and capital costs of the NSAC. The formal proposal from Comcast does propose a smaller PEG fee ($0.44/month/cable subscriber) to be collected from the customers, which would only be able to be used for capital costs.

Both the franchise fee and the PEG fee are passed through by Comcast to cable subscribers.

Based on Comcast's proposal, the amount of the franchise fee retained by the City for its use to fund the Communications budget may be less if the City is interested in maintaining current service levels provided by NSCC.

STAFF RECOMMENDATION

Based on the current Comcast proposal, staff recommends adoption of a resolution to preliminarily reject the renewal of the Comcast franchise.

REQUESTED COUNCIL ACTION

Motion to adopt a resolution preliminarily rejecting the renewal of the Comcast franchise.

-or-

Motion to adopt a resolution to renew the Comcast franchise pursuant to the terms of the Comcast proposal.

Prepared by: Patrick Trudgeon, City Manager (651) 792-7021

Attachments:
- A: Executive Summary of Comcast Proposal
- B: Resolution to preliminarily reject the renewal of the Comcast franchise
- C: Resolution to renew the Comcast franchise pursuant to the terms of the Comcast proposal
- D: Minutes from May 15, NSCC Special Meeting

Attachment A

Comcast of Minnesota's Response to:
North Suburban Communications Commission's
Request for Renewal Proposal for
Cable Television Franchises in the Member Cities

December 20, 2013

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INTRODUCTION

Comcast of Minnesota ("Comcast") makes the following proposal for renewal of a cable franchise under 47 U.S.C. § 546. The Federal Cable Act requires that Comcast's application be accepted. Denial is only permitted if it is based on an established and adverse finding on 4 limited criteria: (a) whether "the cable operator has substantially complied with the material terms of the existing franchise and with applicable law"; (b) the "quality of the operator's service," (c) whether the "operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal"; and (d) whether "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." Given high satisfaction rates, a high-performing system, Comcast's clear qualifications, and the many benefits provided in this proposal, Comcast's renewal should be granted.

Comcast's past performance in the North Suburban Cable Communications Commission (NSCC) communities is evident in the NSCC's Staff Report's conclusion that "generally, cable subscribers in the NSCC service area indicate that they are satisfied with the Comcast cable TV service." Comcast received high ratings in picture quality, channel offerings, customer service, and responsiveness. Comcast, according to the NSCC's own evaluation, provides quality services to its subscribers. A survey study requested by Comcast confirms high general satisfaction with the current cable system. Indeed, this is due to Comcast's substantial investments in the cable system in the last decade, its role in the community as an employer and a supporter of local causes, its diverse channel offerings and high-quality picture and sound, its dedicated and experienced managers, and its competitive pricing. Similarly, the NSCC's Staff Report, along with the information supplied herein, leave no question about Comcast's qualifications to operate the cable system.

However, the NSCC Staff's Report and RFRP are dominated by unsupportable demands for excessive public, educational, and government access (PEG) channel capacity, a free institutional network (I-Net) for the NSCC and member-city governments, and unlawful contributions to pay for the NSCC and NSAC's extraordinary capital and operational expenses. While the NSCC's Staff's RFRP violates the Federal Cable Act as well as the First Amendment in many of these respects, Comcast has proposed terms on these items that are both lawful and supported by the community's cable-related needs and interests, taking into account the costs.

EXECUTIVE SUMMARY OF PROPOSAL

Comcast's proposal provides the following material benefits for the member cities of the NSCC:

- A maximum permitted franchise fee on cable services of 5% which, based on current revenue, will approximate $15.5 million over the ten-year term.
- PEG capital funding of approximately $4.8 million over a 10–year term, which is more than adequate to support PEG facilities and equipment during the term of the franchise.
- Complimentary basic cable service to public schools, libraries, and municipal buildings, with a value over the life of the franchises exceeding $128,000.
- Enhanced financial accountability to the member cities through payment of all franchise fees and PEG fees directly to each member city.
- As a solution to the heavily diluted and sparsely watched 8 PEG channels that exist today, Comcast proposes a much more robust and manageable 4 channels: 3 standard-definition and 1 high-definition, with an opportunity to obtain additional channels in the future based on actual usage.
- Inclusion of the 4 PEG channels on the digital channel guide with detailed program listings.
- Continued use of an institutional network for both PEG-related and non-PEG-related uses at reasonable rates in compliance with applicable law.
- Continued delivery of popular and innovative cable services over Comcast's high-performing hybrid fiber-coax cable system.
- Compliance with the FCC's customer service standards with reporting and enforcement mechanisms.
- An improved audit and dispute resolution procedure to avoid unnecessary legal and consultant fees and to foster an improved working relationship between the NSCC and Comcast.
- A performance bond in the amount of $500,000 to guarantee the faithful performance of the obligations in the franchise agreements.

These and other aspects of Comcast's proposal are further outlined in the rest of this Executive Summary, and detailed in the form responses below.

A. Based on ascertainment findings and current PEG usage, Comcast's PEG offerings will more than satisfy established community needs.

Even the NSCC's biased consultant could not justify the PEG demands made by the NSCC staff. The NSCC's PEG consultant's report, despite being flawed by bias and improper methodologies, shows low interest in and need for 8 PEG channels and it fails to address the issue of cost to consumers. The Buske Group—which conducted the NSCC's ascertainment—took a biased approach to the whole subject: the part of the Buske's business that found a "need" for 8 PEG channels and excessive funding compliments the other part of Buske's business that provides consulting services for PEG channels and facilities. Buske's faulty process is explained in detail in the expert report of Talmey-Drake Research & Strategy Inc. (at Exhibit 3).

Despite Buske's efforts to generate as much interest in PEG as possible, even its report shows little community need or interest for 8 PEG channels. Less than half of cable subscribers could say they had "ever watched a program on a CTV channel."[1] More specifically, 77.3% of subscribers interviewed by Group W said they never watched or watched on a less-than-monthly basis channels 14, 15, and 16. 85.5% of subscribers never watched or watched on a less-than-monthly basis channels 18, 19, and 20.[2] Also a recent community survey by the City of Shoreview confirms low interest in PEG programming in the region.[3]

Comcast's legally and scientifically proper survey showed little community interest in PEG. Comcast's expert survey-research firm, Talmey-Drake, using scientifically sound, reliable survey methodology, also confirmed low community need and interest in PEG:

- Most subscribers couldn't name a single access channel;
- Just 1 out of the 8 channels—Channel 16—had "regular" (at least once per week) viewership;

1. Group W Report (NSCC Staff Report Ex. C) at 12.

2. Ex. 4 at 16-17.

3. Shoreview's 2013 survey results can be found at http://www.shoreviewmn.gov/home/showdocument?id=2626.

- Between 60% and 81% of customers said they "never" watch 7 of the 8 channels, with between 78% and 94% saying they "seldom" or "never" watch each of the 8 channels.[4]

Comcast's mass-communications expert confirms that the NSCC staff's PEG demands are excessive. For more than fifteen years the NSAC has had the use of eight channels. Despite the laudable efforts of the NSAC's staff and volunteers and the expenditure of millions of dollars, the NSAC has been unable to properly utilize this channel capacity. When considering (for example) that the local ABC broadcaster serving 1.7 million homes using a large professional staff and a multi-million-dollar budget covers local government, education and public-interest topics on a single channel, it defies logic that 8 channels are necessary to cover the local government, educational, and public-interest events in the NSCC's subscriber network of fewer than 60,000 homes. The result has been a dilution of PEG content, stale and repeat programming, and a lack of interest and viewership.

Moreover, the NSAC's PEG channels are competing in a growing marketplace of local-information sources: newspapers, local websites, broadcast stations, neighborhood weeklies, blogs, YouTube, Twitter, and Facebook, just to name a few. Unlike fifteen years ago, it is easier and cheaper than ever for anyone to create and publish video content to the world—without the need for expensive studio equipment and not confined to the limited reach of the local cable system. The expert report of Professor Amy Kristin Sanders (of the University of Minnesota School of Journalism and Mass Communication) analyzes, explains, and confirms these issues. That report is attached as Exhibit 6.

Comcast's proposal strengthens local PEG channels. In light of the above, Comcast will make available at no cost 3 standard-definition channels and 1 high-definition channel on its basic tier for PEG programing. This is more than enough channels to meet the actual need or interest in PEG programming. Comcast's proposal is designed to strengthen the NSAC's PEG offerings by consolidating content onto 4 high-quality channels. Instead of filling 8 channels with several dozens of repeats of stale programming that turns away potential viewers, 4 strong channels with fresh programming will be of greater value to the community.

As a further benefit to help strengthen PEG channels, Comcast will assist the NSAC in getting detailed program listings on the digital channel guide. The digital channel guide is provided by a third-party vendor. Comcast will facilitate the NSAC contacting that vendor to make arrangements for it to

4. *See* Ex. 3.

provide the vendor with detailed program listings for inclusion on the digital channel guide. The costs and labor involved in providing the program information is the responsibility of the NSAC.

Further description of PEG access and channel capacity are discussed in Section V. Comcast's objections to the NSCC Staff's demands for more PEG access than what Comcast offers here can be found below in the section titled "Legal Issues and Objections Regarding the Staff Report and RFRP."

B. Comcast proposes reasonable PEG financial support based on legal limits, actual needs and interest, and customer impact.

The Cable Act provides for "adequate" PEG capital costs. Since 1984, the Cable Act has prohibited LFAs from demanding PEG financial support beyond capital needs (facilities and equipment), and all PEG operating support must be applied toward the 5% franchise fee cap. Section 621(a)(4) of the Cable Act, moreover, only allows an LFA to require "adequate assurance that the cable operator will provide *adequate* public, educational, and governmental access channel capacity, facilities, or financial support." (Emphasis added.)

Buske failed to ask customers about cost. The NSCC and its experts failed to make any effort to determine community willingness to pay for PEG. The Buske Group told participants in its "focus groups" about the many things that Buske believed subscribers could get from the cable company regarding PEG programming. At no time did the Buske Group ask PEG users, cable customers, or community members generally, how much they were willing to pay for PEG programming.

Customers do not want to pay anything for PEG programming. Comcast asked customers what they were willing to pay for PEG programming. The median amount that respondents wanted devoted to PEG access was "zero," and they did not place any priority on additional and costly features for PEG programming:

- 67% of respondents said making PEG programming in HD format was not important;
- 80% of customers said they should not have to pay any amount for HD PEG-access programming;
- 63% of customer said making PEG programming in an on-demand platform was not important.

Current PEG fees are too high. Today, all customers are paying $4.15 per month for services that customers do not want. This high cost hits Standard Basic customers hardest. Those customers pay only $13.78 per month for cable service, but the PEG fee tacks on $4.15 to the 5% franchise fee (which costs approximately $0.90). The combined amount for PEG support and franchise fees for a Standard Basic customer is over 26% of their total bill in 2013 and it will be in excess of 41% by 2017 based on the RFRP's demands. Despite all customers having to pay these fees, PEG channels have low viewership and the NSAC's report shows that only 3.5% *of respondents* had ever been involved in appearing on a PEG program.[5]

The NSCC and NSAC are sitting on $2.1 million in cash reserves. Few people are aware that the NSAC and NSCC are in fact storing $2.1 million in cash reserves. This extraordinary reserve could be used by the NSCC and NSAC for PEG expenses or capital costs.[6] Yet, the NSCC Staff Report demands additional PEG funding, without ever mentioning these reserves and despite the fact that the NSCC has been unable to spend all the money it currently receives. What makes the PEG-funding demands even more remarkable is that most of the NSCC's funding is spent on professional and consultant fees.[7]

The RFRP seeks $14m in PEG capital fees plus $13 million for operating support from Comcast customers without justification. In violation of the Cable Act, the Staff Report and the RFRP demand $1.3 million in operating support per year, with a 2% increase per year. Also violating the limitation on LFA demands to no more than "adequate" PEG capital funding, the Staff Report and RFRP seek nearly $14 million in capital grants over a ten-year franchise.[8] These demands far exceed historical expenditures[9] and the previous franchise's allowance of just under $100,000 in capital grants per year. They are not substantiated in the Staff Report: exhibits to the Report grading the NSCC and cities' equipment shows most equipment in excellent or good condition. The NSCC Staff's demand is significant and disproportionate in its relation to what is received in other markets.

Comcast proposes lawful PEG capital funding. In this Proposal, Comcast offers to provide lawful PEG capital funding but will not provide operating

5. Group W Report at 21.

6. Ex. 2 (E-Consulting Report).

7. *Id*.

8. NSCC Staff Report Ex. G.

9. Historical expenditures over the last three years by the NSCC and NSAC would result in a PEG capital fee of $.44 per customer per month.

support beyond the 5% franchise fee cap on franchise fees. As explained in detail within this application, Comcast is proposing a two-tiered PEG Capital Fee. Tier 1 is a PEG Capital Fee of $0.44 per customer per month for the NSCC/NSAC's capital needs, for a total approximating $1.6 million over 10 years. This amount is based on historical capital spending and increases current franchise-required PEG capital funding of $0.27 per customer per month by 63%. Tier 2 is an additional PEG Capital Fee in support of the individual community PEG capital needs identified in the Staff Report, with the PEG Capital Fee allocated on a per customer basis specific to each community, which in total will produce an additional $3.2 million in funding. The grand total of Comcast's PEG capital funding proposal is $4.8 million, a substantial increase over the less than $1.5 million in the current franchise. Complimenting this amount is the NSCC and NSAC's $2.1 million cash reserve.[10]

C. Comcast's system is modern and high-performing.

The NSCC system features a two-way interactive plant and highly reliable fiber-to-the-node architecture. The system carries hundreds of channels of diverse programming and offers a variety of cutting-edge services, such as high definition (HD) television, digital service, video on demand (VOD), and digital video recorders. The NSCC's report confirms that Comcast's subscriber system "can provide the services desired by Comcast's customers."[11]

Since the adoption of the existing NSCC franchise in 1998 and the upgrade of the cable system serving the NSCC franchise area to 750MHz, Comcast has continued to invest and innovate to bring new valuable services to NSCC customers that could not have been imagined in 1998. In the existing NSCC franchises, Comcast's predecessor Meredith Cable committed to program a "minimum of 81 analog channels." This requirement almost seems quaint in light of the modern technologies and innovation deployed by Comcast in this community.

Comcast today provides over 160 channels of programming over the cable system. In 1998, HDTV was not even mentioned in the franchise. Comcast provides more than 100 HD channels to customers. In 1998, the franchise contemplated Meredith adding 3 new "pay per view" services. Comcast's On-

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10. Ex. 2.

11. CBG Report (NSCC Staff Report Ex. A) at 4.

Demand library now exceeds 80,000 titles, with over 20,000 HD choices, available on TV and streaming online.

Behind the scenes there has been much hard work and investment by Comcast to make these and other advanced services available. As CBG's Technical Report attested, the Comcast headend and hub in Roseville are among the best designed and maintained headends in the country. The headend is safely designed to protect against power surges from lightning or other causes. The headend also has more than adequate back-up power. In the event of an outage, the headend and hub could continue to run for weeks.

From Comcast's headend, video, voice, and high-speed data services are transported to hubs that serve Comcast's customers throughout the Twin Cities over Comcast's "converged regional area network" or C-RAN. The NSCC franchise area is served out of the Roseville and Shoreview hub, Comcast's network features a fiber-to-the-node architecture. When Comcast upgraded its NSCC cable system, it built fiber deep into the neighborhood. In doing so, bandwidth available to customers was maximized by reducing the need for amplification and by providing more bandwidth for fewer customers.

Customer-premises equipment has also greatly improved over the term of the NSCC franchises. In addition to facilitating the reception of exciting new digital video services by customers, Comcast's new generation of converters are two-way devices and provide an important network-monitoring function for Comcast. Comcast now constantly monitors whether signals are being transmitted cleanly to customer premises. Alerting Comcast to network issues before the customer even knows the problem exists. Comcast locally monitors its network 24x7x365 to ensure an uninterrupted, and high-quality experience for the customer.

D. Customers in the member cities are very satisfied with their cable service and offerings.

Due to ongoing investment in the cable system and innovation by Comcast, the NSCC communities enjoy the very best cable services available anywhere in the country. Comcast currently serves more than 600,000 subscribers with a wide array of product offerings—video, internet, phone, and home security and management—all backed by 24-hour customer service. At the heart of Comcast's operation is its industry leading fiber-based IP network. Comcast has created a nationwide state-of-the-art network, built on an advanced IP platform that allows new and innovative offerings to customers faster than ever.

The NSCC's survey—though flawed in many ways—at its most basic level also found high satisfaction rates:

- 90% rated reliability of service as good or very good;
- 90% rated quality of picture and sound as good or very good;
- 75% rated number and variety of channels as good or very good.

Comcast's survey similarly shows that 70% of customers are overall satisfied with Comcast services.[12]

Comcast has transitioned all services to digital and developed a low-cost digital device (DTA) that is not available from most competitors. Comcast has provided customers with the ability to control TVs using smart phones and tablets, and to watch programming online and on IP devices in the home.

In the Twin Cities, Comcast and its predecessor companies have invested more than $1 billion upgrading, extending and maintaining the network infrastructure. Comcast's customers and the region as a whole have been direct beneficiaries of that investment as Comcast has introduced more product choice from a single provider for both residential and commercial consumers, as well as the fastest available internet speeds, greater customer value, and superior reliability. No formal upgrade of the cable system is required or proposed at this time.

E. Comcast's customer-service ratings are high.

Comcast has continued to invest in improvements in customer service and will continue to strive to meet all applicable FCC customer-service standards. There is a world of difference between the way customer service is delivered today from when the last franchise agreement was reached in 1998. Among many options that did not exist in 1998 (and which exceed the requirements of the current franchise and FCC regulations) are: (a) a host of online service choices including making payments, changing services, checking on and reporting service status, help forums, and customer-service chat; (b) customer service by text message including checking balances, checking for service outages, cancelling service calls, finding a customer service center, and obtaining information about service features; (c) self-installation options; and (d) the Comcast Guarantee, which includes a 30–day money back guarantee on

12. Ex. 3 at 10.

services, a $20 credit or free premium channel for 3 months for any missed appointment or if Comcast fails to resolve a problem on the first visit, and 24–hour 7–days-a-week customer service. Over 73% of respondents in the NSCC's survey rated Comcast's "helpfulness of telephone customer service representatives" as good or very good, over 70% rated Comcast's "ability . . . to respond to a service call within the promised time" as good or very good.[13] The complaints produced by the NSCC show that few customers are dissatisfied with service. This franchise proposal continues to ensure a high level of customer service in compliance with applicable FCC regulations.

F. Comcast's I-Net proposal provides significant services beyond those required by the Cable Act at a reasonable cost.

As explained further below in Comcast's legal objections, the NSCC may not condition renewal of a franchise on demands for a free and separate institutional network. But the Cable Act does allow LFAs to ask for some capacity for PEG-related uses on an existing network built by a cable operator for non-residential use. For the NSCC, this obligation has expanded into provision of an institutional network beyond PEG purposes, offered by one member city commercially to third parties, even bidding against Comcast for business. The NSCC would have this institutional network continue under a new franchise at no cost to the NSCC or its member cities—in effect demanding an in-kind service unrelated to PEG usage. In addition the Staff Report and RFRP do not offer information showing current usage, expected need, or community interest for this separate institutional network, and customers surveyed expressed no desire to pay for one.

Notwithstanding Comcast's objections above and throughout this application, and in an attempt to accommodate the NSCC's demands, under renewed NSCC franchises Comcast will agree to continue to provide institutional-network services comparable to that provided the NSCC today. Comcast will offer the portion of the institutional network used for PEG-purposes without charge to the NSCC (subject to Comcast's right to pass through the value of the network used for PEG-related purposes to subscribers as a PEG-capital contribution). To account for the NSCC's I-Net usage unrelated to PEG, Comcast will charge the fair-market value of that portion—as calculated by QSI Consulting in Exhibit 5. If the NSCC and member cities would prefer to not pay for the non-PEG-related I-Net features that it demands, Comcast will offer these services as an in-kind contribution to the NSCC subject to the 5% franchise fee cap. The member cities of the NSCC may choose to

13. Group W Report at 9.

allocate these costs depending on their usage. The NSCC and member cities would be prohibited from offering the network as a commercial service to nongovernmental entities.

G. Comcast is an active member of North Suburbs communities.

Comcast plays an active role in the NSCC communities. First, Comcast employs approximately 2,000 people across its Twin Cities operation centers, with a payroll exceeding $118 million each year. This includes 72 engineers and other staff at Comcast's Fairview Avenue office, who serve Comcast's headend facility, located in Roseville. Many of Comcast's employees have been part of local cable operations for more than 20 years, working at the forefront of an industry that has helped transform the area into one of the most connected and technologically sophisticated markets in the nation.

In all the years that it has operated franchises in the North Suburbs, Comcast and its dedicated employees have also partnered with dozens of Twin Cities social-service agencies and nonprofits to help make this a better place to live by engaging in volunteer activities, foundation support, and in-kind contributions. Comcast's signature community investment event is Comcast Cares Day, where each year tens of thousands of Comcast employees, their family members and friends come together for a nationwide day of volunteering at hundreds of work sites across the country. Here in the Twin Cities, Comcast continues to set new milestones each year in employee involvement, as more than 2,000 Comcast Cares Day volunteers participated this past April at over 30 metro-area locations. Some of those organizations benefitting this year include Northwest Youth and Family Services, based in Roseville, as well as the Roseville location of Bridging, Inc., Gibbs Farm in Falcon Heights, and Community Action Partnership of Ramsey & Washington Counties. Other engaged community partners included Greater Twin Cities United Way, Wilder Foundation, CLUES (Comunidades Latinas Unidas en Servicio, Inc.), Solid Ground (formerly East Metro Women's Council), ARC Greater Twin Cities, and the Boys and Girls Club of the Twin Cities.

Comcast is engaged in a variety of other community-service and support programs throughout the year. Comcast's Beyond School Walls partnership with Big Brothers Big Sisters pairs Comcast employees (the Bigs) with 5th grade students from Hazel Park Preparatory Academy in St. Paul throughout the school year in an effort to encourage mentoring, friendships, and role modeling in a safe, fun environment. In addition, the Comcast Leaders and Achievers Scholarship program has awarded more than $365,000 to over 340 students from across the Twin Cities in an effort to encourage and promote the progress of tomorrow's leaders.

Comcast has also taken an active role in bridging the digital divide through its innovative Internet Essentials program. As the nation's leading broadband provider, this ambitious and comprehensive broadband adoption initiative has been designed specifically for low-income families with children enrolled in the National Free and Reduced School Lunch Program, all with the goal of making the Internet available at a significantly reduced cost. In addition, Comcast makes low-cost computers available for these students and families, as well as free online and in-person training on how to use the Internet safely and effectively.

H. Comcast has the full capability to perform.

The applicant is Comcast of Minnesota—an indirect subsidiary of Comcast Corporation, which is the largest cable operator in the United States. Founded in 1963, Comcast Corporation has over 24.4 million subscribers in 39 states and the District of Columbia, and has constructed and operated advanced cable systems across the nation, with unparalleled experience and expertise in advanced cable technology, maintenance, and operation.

As publicly filed documents show, Comcast Corporation is financially sound. In 2012, Comcast Corporation reported over $62 billion in revenue, and over $164 billion in assets. These numbers clearly demonstrate that Comcast of Minnesota has access to all the financial resources necessary to meet its franchise obligations in the NSCC, with the backing of Comcast Corporation. Comcast of Minnesota has never failed to meet all of its financial obligations in more than a decade of operations in these communities.

I. Other Issues Requested in the RFRP

The RFRP requested that this executive summary also address the following topics. Comcast is not proposing any change in the ownership and management of the system. As addressed above, there are no material system design, construction, or upgrade plans that should be incorporated into the franchise renewal because Comcast will continue to innovate and invest in the cable system due to the need to compete with other multi-channel-service and over-the-top video providers in the marketplace. There are no material proposed changes in program or other services, other than the continued development of innovative and popular new services by Comcast as customers and the marketplace demand. Comcast does not anticipate a material change in cable service rates as a result of the terms of this franchise renewal, but may make adjustments to rates to reflect programming and other business costs as allowed by law. Comcast will not be continuing "Universal PEG Service" for customers but will provide the few customers using that service with a 6–month transition to Comcast's basic level of cable service (if they choose).

J. Comcast's renewal proposal meets all criteria under the Cable Act and should be approved.

The service offerings described above, along with further details provided throughout this application, clearly demonstrate that it is more-than qualified to have renewed its competitive cable franchises in the North Suburbs. Indeed, the formal renewal process was created by Congress to protect cable operators from unreasonable and excessive demands by local franchise authorities—demands very much like those set forth in the NSCC Staff Report and RFRP.

Congress protected cable operators by providing procedural and substantive requirements. Under federal law, there are only 4 strictly limited grounds on which denial of renewal can be based, and none of those grounds exist. Comcast's proposal clearly fulfills these fundamental requirements. First, Comcast has complied in all material respects with the existing franchise. Second, as described in section IV, Comcast's system is high performing, comparable to any system in the country in quality. Survey results confirm very high marks in reliability, picture and sound, channel variety, and customer service. Third, as shown in sections II and III, Comcast is the largest and most experienced cable provider in the country, and its financial and technical capabilities are not in question. Fourth, as explained throughout this application, Comcast offers a system that reasonably meets the needs of the member cities' communities. Renewal should not be in dispute.

Comcast, of course, submits this proposal with the understanding that further discussion by the parties will be necessary to refine certain elements of the proposal and incorporate the results of the parties' discussions into the provisions of the franchise agreements. Comcast submits this proposal under an assumption that each member city's Franchise Agreement will be the prevailing document that governs all terms and conditions by which Comcast and the NSCC will be obligated. Comcast looks forward to further discussions with the City with respect to its Proposal.

LEGAL ISSUES AND OBJECTIONS REGARDING THE STAFF REPORT AND RFRP

To protect its right to continue providing cable services, and in an effort to work within the process that the NSCC staff has designed, Comcast submits this proposal despite the many significant legal issues raised by the RFRP. By submitting this proposal, Comcast does not waive any of its rights, including its right to continue to object to the RFRP on any ground in other or related proceedings.

Comcast has responded to the RFRP in a variety of ways, in light of the legal issues discussed below. For example, in some cases where Comcast believes a demand is particularly unreasonable or overly burdensome, Comcast has noted its objection or provided information that reasonably responds to the demand. In other cases, to resolve differences with the NSCC staff, Comcast has gone beyond what the NSCC lawfully may require. In still other situations, Comcast has proposed alternatives that are subject to further discussions between the parties. In these and other cases, Comcast does not waive its rights to object to a particular request or requirement.

Comcast states that this Proposal responds to the NSCC's Staff Report and RFRP's demands as a whole, and that Comcast reserves the right to change any elements of this Proposal if *any* part of the RFRP—whether by voluntary amendment by the NSCC, court order, or other means—is changed or deemed unlawful.

A. The Cable Act establishes an expectation of renewal, and provides limited grounds for denial.

The Cable Act has a number of goals, including the creation of "an orderly process for franchise renewal which protects operators against unfair denials of renewal."[14] Another purpose is to "promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems."[15] The procedures in the Cable Act are designed to effectuate these goals, requiring a formalized process for making and evaluating a renewal proposal, and an administrative hearing and judicial review following any attempted denial.[16] It is well recognized that "[t]he Cable

14. 47 U.S.C. § 521(5).

15. *Id*. § 521(6).

16. *Id*. § 547.

Act establishes a significant federal law property expectation in the renewal of a franchise."[17]

Substantive limitations also protect Comcast's interest in continuing to provide its cable service in the North Suburbs. The Cable Act confines grounds for denial to considerations of (A) whether the operator has substantially complied with the material terms of the existing franchise and applicable law; (B) the quality of the operator's service, in light of community needs; (C) the operator's financial, legal, and technical ability; and (D) whether the operator's proposal *reasonably* meets the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.[18] In addition, the franchising authority must "balance the community's need for a certain cable service against the cost of providing that service."[19] Under the Cable Act, Comcast's "responsibility is to provide those facilities and services which can be *shown* to be in the interests of the community to receive in view of the costs thereof."[20] "In assessing the costs [under § 546(c)(1)(D)], the cable operator's ability to earn a fair rate of return on its investment and the impact of such costs on subscriber rates are important considerations."[21]

Additionally, the FCC has interpreted the Cable Act to prevent franchising authorities from imposing excessive demands for PEG channel capacity, I-Nets, PEG operational support, payments for consultants, and the like.[22] In doing so, the FCC noted a new competitive and technological reality

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17. *E. Telecom Corp. v. Borough East Conemaugh*, 872 F.2d 30, 35 (3d Cir. 1989); see *also Continental Cablevision of Mass., Inc. v. Irwin*, No. 91-11256, 1991 U.S. Dist. LEXIS 21805, *8 (D. Mass. June 4, 1991) ("The Cable Communications Policy Act establishes a property right on behalf of licensed cable operators in the expectation that its franchise will be renewed.").

18. 47 U.S.C. § 546(c)(1), (d).

19. *Union CATV, Inc. v. City of Sturgis, Ky*., 107 F. 3d 434, 440 (6th Cir. 1997).

20. *Id*. (quoting and emphasizing H.R.REP. No. 98-934, at 74, reprinted in 1984 U.S.C.C.A.N. at 4711).

21. *Id*. (quoting H.R.REP. No. 98-934, at 74, reprinted in 1984 U.S.C.C.A.N. at 4711).

22. *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 5101 (2006) ("621 Order"). The FCC subsequently applied this "reasonableness" standard to incumbent cable operators. *In the Matter of Implementation of Section*

facing cable operators, and warned that "the current operation of the franchising process . . . contravenes the statutory imperative to foster competition in the multichannel video programming distribution ("MVPD") market."[23] Specific demands by the NSCC Staff that violate these 621 Orders are noted throughout this application.

Above all, under the criteria set forth under the Cable Act, caselaw, and FCC orders, Comcast's application should clearly be accepted for renewal, and Comcast will assert and preserve all procedural and substantive protections under the Cable Act, the U.S. and Minnesota Constitution, and all other applicable law throughout this process.

B. The RFRP includes many unsupported, unnecessary, and unconstitutionally burdensome demands.

As a cable and media provider, Comcast is a First Amendment speaker entitled to the protection afforded members of the press and other participants in the marketplace of ideas.[24] Article 1, section 3 of the Minnesota Constitution provides similar speech protection under state law.

The United States Supreme Court has held that demands made by a governmental body that condition a cable provider's right to engage in speech must meet the standards set forth in *United States v. O'Brien*, 391 U.S. 367, 377 (1968).[25] The First Amendment and the *O'Brien* decision require the government to show—for regulations that place incidental restraints on the non-communicative aspects of speech—that the regulation furthers an important or substantial government interest unrelated to the suppression of free expression

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621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, 22 FCC Rcd 19633, ¶¶12-15 ("Second 621 Order").

23. 621 Order ¶¶ 2- 3.

24. *E.g., Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) ("There can be no disagreement on an initial premise: Cable programmers and cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment."); *Leathers v. Medlock*, 499 U.S. 439, 444 (1991) (cable television "is engaged in 'speech' under the First Amendment, and is, in much of its operation, part of the 'press'"); *City of Los Angeles v. Preferred Comms., Inc.*, 476 U.S. 488, 494 (1986) ("Cable television partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspaper and book publishers, public speakers, and pamphleteers.").

25. *Turner*, 512 U.S. at 662; *Preferred Comms.*, 476 U.S. at 495.

and that the regulation be no greater than essential to the furtherance of the interest.[26] "[T]he [governmental unit] bears the burden of proving that the elements of the *O'Brien* test are satisfied."[27] Here, the Staff Report and RFRP show that the NSCC has not met this constitutional standard in several ways:

1. The Staff Report demands for PEG channels are not narrowly tailored. The NSCC demands 8 channels without a showing that those channels are necessary to establish a substantial government interest or can even be used for local programming by the NSCC.[28] This objection is further discussed in part 3 below.

2. The Staff Report and RFRP do not support the demand for Comcast to provide a complimentary institutional network (I-Net) to the member cities as a condition for offering cable services to North Suburbs residents. Surveys do not even show that maintaining an I-Net is a priority for the community. In the Talmey-Drake survey, 62% of customers said they did not want to pay more for maintaining an I-Net serving local government and other public entities. And paying for the I-Net was very low in customers' ranking of priorities.[29]

The "Group W" telephone survey never even asked subscribers (who ultimately pay the costs of an I-Net) about whether individuals prioritized a free institutional network for the member cities, and the Buske memo does not cite any specific or identified members of the community. The Buske memo also makes no attempt to measure how, for example, the I-Net is currently used or what future I-Net demands will actually be. Instead, it purports to characterize and categorize as "primary and major findings" the conclusory comments about an I-Net from anonymous individuals during "meetings with representatives of interest groups."[30]

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26. *O'Brien*, 391 U.S. at 377.

27. *Preferred Comms. v. City of Los Angeles*, 754 F.2d 1396, 1406 n.9 (9th Cir. 1985).

28. *See Preferred Comm., Inc. v. City of Los Angeles,* No. CV 83-5846 (CBM), 1990 U.S. Dist. LEXIS 20205, at *36 (C.D. Cal. Jan. 5, 1990) (city requirements for 8 mandatory access channels is unconstitutional when the city failed to carry its burden to show why that many channels were necessary; noting the city's provisions were not narrowly tailored to its interests).

29. *See* Ex. 3 at 36.

30. *See* Buske Memo. at 54.

3. The NSCC Staff's repeated demands regarding Comcast's technical, construction, financial, and legal history and system are not narrowly tailored or necessary to achieve important government interests. The NSCC's "disclosure requirements must be measured against the *O'Brien* test to determine whether they unduly burden [the cable operator's] First Amendment rights."[31] Comcast has operated franchises in the member cities for the past 11 years, and the NSCC's own consultants found that 90 percent of those surveyed are satisfied with Comcast's performance. The NSCC has audited Comcast's technical and financial capabilities, and is familiar with Comcast's management team. Clearly, Comcast is not a stranger to the NSCC and the member cities and has proven that it is legally, financially, and technically qualified to operate a franchise—by doing it successfully for more than a decade.

Nevertheless, the RFRP repeatedly seeks extremely detailed information about Comcast's subscriber network and geographic areas, technical system, and construction. Many of the NSCC's demands seek information that the NSCC already has or that is publicly available or that concerns issues that are not in dispute or that are unnecessary to its evaluation of whether Comcast will reasonably meet the member cities' cable needs going forward. One example is that the NSCC seeks detailed and unnecessary financial information when Comcast's financial ability is not in question.[32] Insofar as the NSCC will condition Comcast's right to engage in speech on meeting these unnecessary demands, Comcast objects.

In addition to not being narrowly tailored, many information demands by the NSCC's RFRP violate the First Amendment because they are unduly burdensome to answer. For example, the NSCC has asked Comcast about thousands of franchises and hundreds of companies, detailed and confidential financial information that is not kept in the ordinary course of business, and detailed and confidential technical information about the manner in which Comcast delivers cable. Collecting and answering these demands—assuming they could even be met—would substantially burden Comcast. The NSCC staff has not justified—as it must, before so burdening a speaker—how all this information is necessary to evaluate the qualifications of a company with which it already is familiar.

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31. *Group W Cable, Inc. v. Santa Cruz*, 669 F. Supp. 954, 971 (N.D. Cal. 1987).

32. *See, e.g.*, *Group W*, 669 F. Supp. at 971 (an LFA cannot "deny a franchise for the failure to answer questions that are irrelevant to its [cited substantial government] interest in minimizing disruption of the public domain").

C. The Staff Report and RFRP make demands—mostly related to the I-Net and PEG channels and operations—that are unlawful under the Cable Act.

In addition to violating First-Amendment standards, many of the substantive demands in the staff report, the consultant reports, and the RFRP are unlawful under the Cable Act.

Again, section 621(a) prohibits the NSCC from unreasonably refusing to award a franchise. Section 621(a)(4) of the Cable Act allows an LFA to require "adequate assurance that the cable operator will provide *adequate* public, educational, and governmental access channel capacity, facilities, or financial support." (Emphasis added.) In its 621 Order, the FCC, interpreting these 2 statutory provisions together, ruled that LFAs may not make unreasonable demands for PEG and I-Net support. The FCC also affirmed that an LFA must "evaluate their current and future PEG needs at the time of an incumbent provider's renewal, and are allowed to request such PEG support from their providers, within the limits of the Act and the Commission's statutory interpretation."[33]

PEG Channels. Congress sought to protect and further the diversity of video programming when it enacted Section 611 of the Cable Act to permit LFAs to demand PEG channels as a condition of franchise renewal.[34] Congress did not enact Section 611 to give LFAs carte blanche to demand any number of channels desired, nor did it specify the level an operator must provide. Read in light of First Amendment concerns, Section 611 permits an LFA to require the minimum number of PEG channels necessary to provide an "adequate" level of access.[35] And indeed the FCC ascribed the word "adequate" its plain

33. 621 Order ¶110; Second 621 Order ¶¶12-15.

34. *See* 47 U.S.C. § 531; House Report at 30, reprinted in 1984 U.S.C.C.A.N. at 4667 ("Public access channels . . . provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at work.").

35. 47 U.S.C. § 541(a)(4) (allowing LFAs to require cable operators to provide "adequate assurance that the cable operator will provide adequate public, education, and governmental access channel capacity, facilities, or financial support").

meaning—that is, "satisfactory or sufficient and not significant."[36] The FCC's 621 Order prohibited LFAs from the practice of conditioning a cable franchise on unreasonable or unsupported PEG-channel demands.[37]

The Staff Report, the RFRP, and the NSCC's consultant reports do not even address the subject of what would represent an "adequate" level of access but, instead, make or support a demand based on the purported aggregate desire of all PEG users and NSCC staff. The most telling evidence of actual need for PEG channels and support is found by examining the 15–year history of the current franchise's PEG usage. That evidence shows an inability to program 8 PEG channels resulting in a dilution of PEG content, loss of customer interest, and an excessive reliance on repeat and stale programming. As such, there is a demonstrated lack of need and interest in a continuation of this large allocation of PEG channels or the expansion of it proposed in the RFRP.

In fact, the demonstrated low viewership in NSCC member city for PEG offerings may in fact be the result of too many PEG channels. There is a demonstrated history, as shown by channel-lineup reports obtained by Comcast, of the NSCC's inability to utilize 8 PEG channels with local, original, or fresh programming. The vast majority of current airtime on PEG networks is reserved for excessive re-runs, stale content, and non-local programming.[38] Old government meetings, youths sporting games from several months earlier, and other programs are played dozens and dozens of times across more than one channel. One entire channel is dedicated to non-local NASA programming.

As explained in the attached expert report of Professor Amy Sanders, this is demonstrative that fewer channels would enhance PEG programming; and 8 channels are certainly not justified.[39] Stale content drives down viewers and interest, and reduces the success of PEG channels, under basic broadcasting standards. Current media consumption trends and technology also show how

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36. 621 Order¶¶ 111-114.

37. *Id*. ¶¶ 5, 110.

38. Ex. 12. Comcast's review of the programming data showed that the average city-council meeting is played 26 times. Other government meetings and sporting events are on average played 25 times and 20 times, respectively. These repeated re-broadcasts occur on multiple channels, including channels viewed by the entire NSCC area. Id. That means that at any given moment a member city resident's channel may air dozens of airings of meetings and games having nothing to do with his or her city.

39. Ex. 6.

viewers can and do prefer to receive local news and information—and most if not all of the programming that might appear on PEG channels—through other means, including internet and live streaming. In sum, more content on fewer channels will enhance and not reduce the quality of PEG programming. The NSCC Staff, through its report, has not shown a substantial need for 8 PEG channels.

In short, the Staff Report, the RFRP, and the NSCC's consultant reports do not provide a basis to support the NSCC's demand for 8 PEG channels, HD channels dedicated to PEG, and video-on-demand resources for PEG.[40] The RFRP violates the Cable Act and the First Amendment in this respect.

Payments for PEG Capital Costs. Section 622(g)(2)(C) excludes from the term "franchise fee" any "capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities." The FCC has made clear that any such capital requirements made of a cable operator are not subject to the 5% franchise fee standard.[41] Though PEG capital costs are not subject to the 5% franchise fee cap, they remain subject to the Cable Act's "reasonableness" requirement and that such LFA requests be supported by an evaluation of PEG related community needs.

The NSCC RFRP says that Comcast "shall voluntarily pay" $14,160,740 to the NSCC over 10 years for additional capital costs to be allocated "in the sole discretion" of the NSCC.[42] The RFRP states that this "voluntary requirement" is supported in the NSCC Staff Report, Needs Assessment Report, and CBG's Technical Review Report. But a close examination of the NSCC Staff Report, Needs Assessment Report, and CBG's Technical Review Report reveals little or no documentation of any current or future need justifying a demand for *any* PEG capital requirement from Comcast much less one of this size. The NSCC's demand for such equipment is therefore unreasonable and under the Cable Act Comcast is not required to comply with it.

Payments for PEG Operating Costs. Section 622(g)(1) of the Cable Act defines a franchise fee as "any tax, fee, or assessment of any kind imposed by a franchising authority . . . on a cable operator or cable subscriber, or both, solely because of their status as such." The FCC has been clear that this provision requires that any required financial support other than reasonable capital

40. *Preferred Comm., Inc.,*1990 U.S. Dist. LEXIS 20205 at *36.

41. 621 Order ¶109; Second 621 Order ¶13.

42. RFRP at 65-66.

expenditures for PEG facilities must be calculated as part of this franchise fee and subject to this 5% cap.[43]

The *Staff Report* and the RFRP repeatedly and without pretext demand PEG operating support "over and above franchise fees and all other financial and in-kind commitments."[44] The report specifically demands an average of $1.3 million per year in PEG operational support, with a 2% increase per year.[45] The RFRP requires Comcast to make these substantial PEG operating grants to the NSCC and NSAC but would not allow these grants to represent any part of the limited franchise fee that the LFAs are allowed to collect. The RFRP also requires Comcast—on top of the substantial grants to the NSCC and NSAC—to pay the statutory maximum franchise fee of 5% of gross revenues.[46] Prohibiting the franchise fee from being offset required by the PEG operating grants violates the Cable Act.

I-Net Demands. As mentioned above, the NSCC report and RFRP condition renewal on Comcast's contribution to the member cities of a free data and telecommunications network ("I-Net") that would provide voice, video, data, and internet-access services for the member cities.

Section 621(b)(3)(D) does not affirmatively authorize demands on cable operators to construct and provide I-Nets free of cost to LFAs.[47] Section 611(b) allows LFAs to seek capacity on an I-Net that the cable operator has chosen to build for its own commercial purposes, but only for providing "channel capacity [that may] be designated for public, educational, or governmental use."[48] Thus to the extent the NSCC demands an I-Net that does not serve the

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43. 621 Order ¶¶ 43-44, 94-96, 105.

44. Staff Report at 38, 67-68, 74, 78, 90, 93.

45. *Id*. at 73-74.

46. *Id*. at 99.

47. 47 U.S.C. § 541(b)(3)(D) ("Except as otherwise permitted by sections 531 and 532 of this title, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.").

48. 47 U.S.C. § 531(b) ("A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 546 of this title, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel

function of carrying channels of PEG programming, and is in fact a demand for a complimentary telecommunications and data pipeline for municipalities—the demand violates the Cable Act.

Indeed, applying the Cable Act's provision barring LFAs from unreasonably refusing to grant franchises, the FCC's 621 Order found that LFAs cannot deny a franchise based on an applicant's "refusal to undertake certain obligations relating to [PEG] and institutional networks."[49] The 621 Order also clarified what kinds of "in-kind" franchise requirements are counted in determining whether a local franchising authority (LFA) has exceeded the 5% of gross revenue cap on franchise fees. The FCC held that "in-kind" mandatory payments required by LFA's which are unrelated to the provision of cable services are not expenses "incidental" to the award or enforcement of a franchise, and count toward the 5%-franchise-fee cap. Examples of in-kind payments cited by the FCC as constituting franchise fees include fiber optic cabling for traffic light control systems, scholarship funds, money for wildflower seeds, and video hookups for a Christmas celebration.[50] Thus, to the extent that the NSCC's I-Net is not related to the provision of cable service, the value of the free I-Net demanded by the NSCC Staff constitutes franchise fees which count toward the 5% cap. The NSCC admits as much in its Staff Report, stating that I-Net facilities, equipment, and capabilities are "in-kind compensation" for the use of the ROW.[51]

The Staff Report also provides no documentation supporting its conclusions that a community need and interest exist for the I-Net. The Staff Report provides no information regarding the NSCC's current levels of use of the existing I-Net provided by Comcast.

Notwithstanding the NSCC's failure to document the community need and interest for an I-Net, Comcast has become aware that the City of Roseville (an NSCC Member City) has leveraged the Comcast-provided I-Net into its own proprietary wide area network which the City has brand named "Metro

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capacity designated pursuant to this section."); 47 U.S.C. § 531(f) ("the term 'institutional network' means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers").

49. 621 Order ¶¶ 5, 110.

50. *Id*. at ¶¶106-107.

51. Staff Report at 23.

INet." Metro INet provides a suite of IT, data, and telephony services to at least 140 local governmental sites within and outside the NSCC franchise area, and has been used to directly complete with Comcast in bids to provide services to third parties.[52] As of October 2012, the City of Roseville collected nearly $500,000 in service fees from Metro INet customers pursuant to joint powers agreements executed with local governmental customers.[53]

The Staff Report and RFRP make demands for a significant and expensive institutional network, as well as continued maintenance and upgrades of that network—and demand it all as an in-kind contribution to the NSCC and member cities.[54]

To the extent that the RFRP's I-Net demands contravene the Cable Act and other laws, and to the extent the NSCC requires an I-Net in-kind contribution without attributing that amount to the 5% franchise-fee cap, Comcast objects.

Technology, Transmission, and Equipment Demands. Section 624(e) of the Cable Act preempts LFAs from regulating equipment and transmission technologies of an applicant cable provider: "No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology."[55] The legislative history shows that Congress was trying "to avoid the effects of disjointed local regulation" and enacted this provision to "prohibit States or franchising authorities from regulating in the areas of technical standards, customer equipment, and transmission technologies."[56]

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52. The resale of Comcast I-Net services by the City of Roseville violates section 7(c) of the franchise. Comcast objects to this continuing violation of the franchise.

53. *See* Ex. 11 (Roseville Joint Powers Summary). Comcast can provide a copy of any specific joint-powers agreement referenced in Exhibit 11 at the NSCC's request. Also an October 2013 presentation to Roseville's City Council noted $1 million in savings from its non-PEG-related use and collection of over $1 million in revenue from offering the Metro INet commercially. City of Roseville, *Overview of the IT Function & Metro-INET Group*, http://www.ci.roseville.mn.us/DocumentCenter/View/12807.

54. *Id*. at 3-4, 19, 20, 23-24, 46, 49-60; RFRP at 16-18.

55. 47 U.S.C. § 544(e).

56. H.R. Rep. No. 104-204(I), at 110 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 77.

In implementing the statute, the FCC concluded that Section 624(e) trumps any other provisions of the Cable Act that let LFAs require certain facilities and equipment in initial franchises and renewals.[57] The FCC also "preclude[d] [LFAs] from specifying the technical means by which a cable operator delivers its signal to subscribers."[58] The FCC found "that it is reasonably clear that local authorities may not control whether a cable operator uses digital or analog transmission nor determine whether its transmission plant is composed of coaxial cable, fiber optic cable, or microwave radio facilities."[59]

The Staff Report and the RFRP repeatedly dictate various technical standards, transmission technologies, and equipment that Comcast must use for its subscriber network, PEG facilities, and an I-Net.[60] In this response to the RFRP, Comcast provides information about its construction, design, and transmission to accommodate the NSCC staff's demands. But in doing so, Comcast does not waive its objection to these demands as violating the Cable Act provisions cited above.

D. The Buske memo—adopted as the ascertainment—is unreliable and does not show real community needs.

The NSCC Staff Report adopts the Needs Assessment Report developed by the consultant Buske Group as its "cable-related needs and interests of the Member Cities." A properly conducted needs-and-interests analysis must give the operator specific, clear, and documented information so that the operator can understand a community's real and actual needs, their relative value to the community, and the benefits and costs likely to result to the community. As the

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57. *In re Implementation of Cable Act Reform Provisions of the Telecomms. Act of 1996*, Report and Order, 14 FCC Rcd. 5296, 5356-57 ¶ 141-42 (1999) ("*Cable Act Reform Report & Order*"), *aff'd*, Order on Reconsideration, 17 FCC Rcd. 7609, 7614 ¶ 13 (2002).

58. *Cable Act Reform Report & Order*, 14 FCC Rcd. at ¶ 127 ("Section 624(e) now precludes [a franchising authority] from enacting and enforcing technical standards that differ from those established by the Commission."), ¶ 182.

59. *Cable Act Reform Report & Order*, 14 FCC Rcd. at 5373 ¶ 189, aff'd, Order on Reconsideration, 17 FCC Rcd. at ¶ 13.

60. *E.g.*, Report at 3, 19-20, 22-24, 42, 44, 46-48, 59-61, 94-98; RFRP at 3, 4, 14-18, 20-24, 27-29, 30-31, 70-80.

legislative history to the Cable Act points out, "it is not intended that . . . the operator . . . respond to every person or group that expresses an interest in any particular capability or service. Rather, the operator's responsibility is to provide those facilities and services which can be shown to be in the interests of the community to receive in view of the costs thereof."[61]

Because franchise renewal is a quasi-judicial exercise, the NSCC should not only focus on the communities' real and actual needs and their costs and benefits, but should also only consider reliable studies in its related decision-making. If the NSCC considers survey research, for example, that research must follow basic research standards and methodologies.[62]

Here, the surveys conducted by Buske and Group W, along with Buske's inferences therefrom, violate basic standards of survey methodology. The NSCC Staff Report and the RFRP itself are made without support or cited with comments from the flawed memorandum from the Buske Group dated July 15, 2013 ("the Buske memo"). The community needs are also often redundantly and confusingly presented in the many and various sections of the RFRP, the Staff Report, and the NSCC's related consultant studies.

As outlined in the attached Rebuttal Report of Talmey-Drake Research, Buske's report and the Group W survey do not pass basic scientific scrutiny.[63] Specific issues include the following:

- The telephone survey features several sampling errors, including an absence of cell-phone only respondents, that greatly affect the outcome of the survey;
- The telephone survey does not set any kind of quota for assuring interviews within each member-city community;
- The telephone survey makes the basic error of identifying the sponsor and questioner before the interview begins;

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61. H.R. Rep. No. 98-934, at 74 (1984) ("House Report"), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4711; *see also Union CATV, Inc. v. Sturgis*, 107 F.3d 434, 440 (6th Cir. 1997).

62. *See* Minn. R. Evid. 702 (specified knowledge must "have foundational reliability"); Minn. Stat. § 14.60, subd. 1 (excluding evidence that is "incompetent" in administrative proceedings); *Niam v. Ashcroft*, 354 F.3d 652, 660 (7th Cir. 2004) ("[T]he spirit of *Daubert* . . . does apply to [quasi-judicial] administrative proceedings."); *see also Malletier v. Dooney & Bourke, Inc.*, 525 F. Supp. 2d 558, 563 (S.D.N.Y. 2007) (survey evidence can be excluded where flaws cumulatively undermine its relevance and reliability).

63. *See* Exhibit 4.

- The telephone survey features several questions that are misleading, uninterpretable, or likely to be misinterpreted;
- The telephone survey report is missing any information about important controls and procedures undertaken to assure accurate results.

Buske also distorts the numbers to make PEG viewership appear higher. Again as outlined in Talmey-Drake's critique, Buske presents viewership of PEG channels but only from a sub-sample of people who stated they watch PEG programming and not all cable subscribers. Thus monthly viewership of channels 14, 15, or 16 would be 22.8%, and weekly viewership would be 9.3%. Weekly viewership of channels 18, 19, and 20 would be 4.3%, for channel 21 would be .08%, and for channel 98 it would be 1.8%.[64] Accordingly, the following table shows how many never watch these channels:[65]

Channel	Buske: Amount that never watch	Rescaled
Channels 14, 15 & 16	3.5%	52.2%
Channels 18, 19 & 20	36.4%	68.5%
Channel 21	72.2%	86.3%
Channel 98	68.7%	84.5%

Also as shown by the Talmey-Drake critique, statistical standards dictate that Buske's focus group is not projectable to the member-city communities. And the focus group process featured its own deep flaws, such as providing information and goals to respondents before the survey and phrasing questions awkwardly or in a results-oriented manner.[66]

The NSCC, through the Staff Report, its consultants' reports, and the RFRP, give inadequate attention to the costs involved in meeting various NSCC demands. This inattention is improper, as the Sixth Circuit made clear in *Sturgis*: "In determining whether [a] proposal is reasonable, [an LFA] must take into account the cost of meeting each need. In order to do so, it must weigh the importance of the need against the cost."[67]

But even with the flaws in the Buske and Group W reports, Group W's survey results cannot avoid the fact that the biggest issue for customers is

64. Ex. 4 at 24.

65. *Id*. at 24-25.

66. *Id*.

67. *Sturgis*, 107 F.3d at 440.

cost[68]—something that the RFRP's excessive PEG demands exacerbates. Perhaps most importantly though, Buske and Group W's reports acknowledge that less than half of subscribers had even watched a single program on a PEG channel.[69] And half of respondents said they were "not interested at all" in HD PEG channels.[70]

In the Talmey-Drake study requested by Comcast, interest in PEG access was also remarkably low. Additionally, Comcast requested a scientifically valid survey to find out the community's needs regarding how many PEG channels are desired in the member cities. The study was performed by Talmey-Drake Research, a respected polling firm that has worked for both operators and LFAs. Talmey-Drake's report—attached to this proposal as Exhibit 3—shows that (a) customers' foremost concern is limiting the cost of cable and (b) there is very low interest in having resources devoted to PEG programming:

- Most subscribers couldn't name a single access channel;
- Just 1 out of the 8 channels—Channel 16—had regular (at least once per week) viewership;
- Between 60% and 81% of customers said they "never" watch 7 of the 8 channels, with between 78% and 94% saying they "seldom" or "never" watch each of the 8 channels;
- 70% of respondents did not want more access channels;
- The median amount of respondent's bills that they wanted devoted to PEG access was "zero";
- 67% of respondents said making PEG programming in HD format was not important;
- 80% of customers said they should not have to pay any amount for HD PEG-access programming;
- 63% of customer said making PEG programming in an on-demand platform was not important; and
- 6% of customers wanted better picture quality for PEG-access channels.

As pointed out by Talmey-Drake, 77.3% of those interviewed said they never watched or watched on a less-than-monthly basis channels 14, 15, and 16. 85.5%

68. Buske Memo. p. 48.

69. Buske Memo. at 52.

70. *See* Group W Memo. at 18.

never watched or watched less than monthly channels 18, 19, and 20.[71] These results further render the RFRP's demands unreasonable and unlawful under the Federal Cable Act.

E. The member cities and their elected governments must have the final say on Comcast's renewal proposal.

By submitting this application in response to the RFRP and other documents sent by NSCC staff in July 2012, Comcast does not necessarily acquiesce to the authority of the NSCC or its various appointed "designees" to perform functions legally entrusted or retained by the member cities. NSCC Resolution 2013–04 purports to delegate member-city authority from the NSCC to the Renewal Committee, the Executive Committee, any staff members, the law firm Bradley & Guzzetta, The Buske Group, CBG, and any of these entities' staff members. The resolution stated that all these various individuals would "be deemed and considered Commission designees imbued with the powers, authority and responsibilities set forth herein." This resolution appears to attempt transfer of all power vested in LFAs by the Cable Act to several unknown, unelected, and removed individuals. Neither state law nor the Cable Act, nor the LFA's original joint-powers agreements, support this kind of purported transfer.[72]

The Franchise Renewal Committee's Resolution 2013–01 § 1 also resolves that the Staff Report, Buske's Needs Assessment Report and Telephone Survey Report, CBG's Technical Review Report, and Front Range Consulting's Financial Review Report "constitute the cable-related needs and interests, findings, conclusions, and recommendations of the Member Cities and their communities, and are hereby adopted in their entirety." Comcast objects to the extent that the committee resolution was an invalid exercise of the committee's authority, and to the extent that outside consultants' reports can constitute

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71. Ex. 4 at 16-17.

72. Minnesota courts have long held that municipal bodies cannot delegate functions or powers involving the exercise of judgment and discretion to subcommittees or individuals. *See, e.g., Jewell Belting Co. v. Village of Bertha*, 91 Minn. 9 (Minn. 1903) (powers requiring the exercise of judgment and discretion cannot be delegated and must be performed by the municipal body itself); *Mpls. Gaslight Co. v. City of Mpls.,* 36 Minn. 159 (Minn. 1886) (power conferred on city council required exercise of judgment and discretion and could not be delegated); *Darling v. City of St. Paul*, 19 Minn. 389, 392 (Minn. 1872) (same).

findings of "community needs and interests" by the lawful LFA under the Cable Act.

Accordingly, this renewal proposal is only directed to the NSCC and member cities, assuming the NSCC is authorized to conduct renewal by valid joint-powers agreements. This proposal is not directed to the several purported designees. Comcast objects to the extent the facts show that federal, state, or local law did not authorize the delegation of the RFRP, Community Needs Assessment, and other LFA responsibilities.

EXTRACT OF MINUTES OF MEETING OF THE CITY COUNCIL OF THE CITY OF ROSEVILLE

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota, was held on the 16th day of June, at 6:00 p.m.

The following members were present:

and the following were absent:

Councilmember _____________ introduced the following resolution and moved its adoption:

RESOLUTION NO._______

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

WHEREAS, the City of Roseville (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)(l) 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 Council (the "Council") of the City of Roseville, Minnesota (the 'City"), 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.

The motion for the adoption of the foregoing resolution was duly seconded by ____________________, and upon vote taken thereon, the following voted in favor thereof:

the following voted against the same: , and the following abstained: .

WHEREUPON said resolution was declared duly passed and adopted.

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the June 16 with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this 16th day of June, 2014.

____

Patrick Trudgeon, City Manager

(Seal)

ATTACHMENT 1

NSCC May 15, 2014 Resolution

RESOLUTION NO. 2014 -04

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

WHEREAS, the North Suburban Cable Commission, d/b/a the North Suburban Communications Commission (hereinafter the "Commission"), is 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, the Member Cities enacted separate ordinances and entered into individual agreements authorizing MediaOne North Central Communications Corp. to provide cable service (collectively, the "Franchises"); and

WHEREAS, as a result of several transfers of the Franchises, Comcast of Minnesota, Inc., ("Comcast") currently holds the Franchises in 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 definition of a "City" is defined under the Franchises to include, among other entities, the lawful designee of 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, Section 626(a)(l) 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 the Member Cities, Comcast invoked the formal renewal procedures set forth in Section 626 of the Cable Act, 47 U.S.C. § 546; and

WHEREAS, the Member Cities informed the Commission, by resolution, that they want it 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 Member Cities have 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 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; 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** (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 has carefully reviewed Comcast's Proposal and has 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,** which rules comply with all procedural obligations set forth in 47 U.S.C. § 546(c); and

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

NOW, THEREFORE, BE IT RESOLVED BY THE NORTH SUBURBAN COMMUNICATIONS COMMISSION, THAT:

1. Each of the above recitals is hereby incorporated as a finding of fact by the Commission.

2. Exhibits A and B are hereby incorporated by reference as if fully set forth in the body of this Resolution.

3. The Commission recommends to the Member Cities that the Member Cities issue a preliminary assessment that the Comcast Franchises should not be renewed.

4. The Commission preliminarily finds that Comcast's Proposal fails to meet the Commission and Member Cities' future cable-related community needs and interests taking into account the cost of meeting such needs and interests.

5. The basis for the Commission's preliminary assessment is set forth in Exhibit A.

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

PASSED AND ADOPTED this 15th day of MAY, 2014:

THE NORTH SUBURBAN COMMUNICATIONS COMMISSION

By: Steve Bell

Chair

ATTEST:

COMPARISON OF PROPOSED FRANCHISE AGREEMENTS[1]

NSCC Current	NSCC Proposed	COMCAST
Use of ROW (Rights of Way)		
Section 2 (2) Right and privilege to use Right-of-Way subject to permitting Section 2 (3) Lease or assignment prohibited	Section 2 (A) (B)—Does not provide open authority to erect, install, construct, etc.: expresses Grantee shall make use of existing poles, underground and aerial facilities. Does not exempt Grantee from obligation to pay compensation for real or personal property other than ROW. (C) Lease or assignment of Grantee's system prohibited.	2.1, 2.4—Grant of Authority to the use of ROW lists equipment that can be erected, installed, constructed, etc., to include poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Prohibition on Lease or assignment of Grantee's system not included
Franchise Term		
Defined Franchise Term of 15 years	Section 2 (D)—Period of 10 years.	2.2—Period of 10 years

[1] This initial comparison excludes a review of the "gross revenues" definition, PEG provisions and I-Net provisions. The last two provisions are covered in other reports and the "gross revenues" definition has already been agreed to.

Previous Franchise Unfulfilled Obligations and Commitments		
Section 10(5) – Retains City's authority over transfer of ownership	Section 2 (E)—Retains City's authority to enforce the terms of several transfers, Memorandum of Understanding, Settlements, etc., from the previous franchise	No such provision.
No Waiver		
Section 13(5) Retains right of the City or Commission to enforce compliance or performance even when they have not exercised that right.	Section 2 (F) (1) (2)—Retains right of the City or Commission to enforce compliance or performance even when they have not exercised that right. Prevents nullification of other provisions if there is a waiver of any other breach.	No such provision.
No Recourse, Construction of Franchise Agreement, Amendment of Franchise Agreement		
Section 9(3) – Exempts the City or the Commission from claims, actions, liability, etc., arising from action or inactions by Grantee.	Section 2—(G) (H) (I)—Exempts the City or the Commission from claims, actions, liability, etc., arising from actions or inactions by the Grantee. Provides the Franchise be liberally construed in favor of the City or the Commission. Allows the City to liberally amend the	No such provisions.

	franchise to accommodate new technology in order for Grantee to better serve its customers; however, retains police powers.	
Compliance With Applicable Laws, Resolutions and Ordinances		
Section 1 (6) … Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of police powers, … Section 13(3) – re: police powers	Section 2 (J) (1)(2)(3)(4)(5)—Requires Grantee to comply with all laws, resolutions and ordinances (even if not in the Franchise); retains police powers of the Grantor. Provides even treatment of all ROW users. Establishes procedure for notifications.	No such provision.
Rules of Grantee		
Section 2 (7) Allows Grantee to establish how it governs the conduct of its business as long as it is not in conflict with laws	Section 2 (K)—Allows Grantee to establish how it governs the conduct of its business as long as it is not in conflict with laws.	No such provision.
Territorial Area Involved		
Section 2 (8) Requires extension in new areas with a minimum or 50 homes per mile underground and 35 homes per mile overhead	Section 2 (L)—Requires Grantee to extend service to newly defined corporate boundaries of the city, giving a 12 month deadline for extension.	2.5—Defines Grantee will not extend to newly incorporated areas unless there is a minimum of 50 homes per cable mile (underground) and 35 homes per cable mile

Twelve month deadline to complete	Line extension requirements to be included.	(overhead), within 500 ft. of the cable system, giving a 24 month limit on completion. Allows charges to customers for drops greater than 150 feet.
Written Notice		
Section 2 (9) Provides timeline to hand delivered and mail notice Grantee and Grantor	Section 2 (M)—Provides requirement for written notices, timeline and person to receive notices.	No such provision.
Network Drops, Equipment and Cable Service to Designated Buildings		
Section 2 (10) Provides listed of required building drops in Attachment B	Section 2 (N)—Refers to the RFRP	Includes list as attachment
Registration, Permits, Construction Codes		
Section 3 (1) Grantee must comply with all building codes and permits. Noncompliance may be grounds for revocation of franchise	Section 3 (A) (1) (2)—Requires compliance with all laws; consideration of aesthetics and private property; supervision by City. Provides remedy for non-compliance.	No such provision.

Repair of Rights of Way and Property		
Section 3 (2) Grantee must fully restore Rights-of-Way and public or private property. If Grantee fails to comply, City will repair and will require reimbursement from Grantee	Section 3 (B)—Lists what rights of way and facilities must be repaired, restored, replaced, reconstructed in event of damage; timeline for commencement of repairs of damage no more than three (3) days (provides for extension by City); reimbursement to City.	Section 3.1—Provides for repair of damage; does not define timeline for commencement of repair; provides for reimbursement to the City.

Conditions on Right of Way Use		
Section 3 (3) Sets forth the rights of the City and Grantee regarding the condition of the Right-of-Way Normal and reasonable obstruction and minimal interference with private property	Section 3 (C) (1) (2)—Establishes right of City to control, construct, relocate, maintain, etc., all of the Right of Way. Requires that Grantee not obstruct or interfere with use of Right of Way, cause minimum interference with rights of property owners and no interference with public utilities.	No such provision. No such provision.
Grantee to Move Lines at Request of City		
Section 3 (3)(c) Grantee at its own expense move or relocate facilities at the request of the City	Section 3 (C) (3)—Grantee, at its expense, to move, disconnect, relocate, etc., when requested by the City in order for the City to conduct necessary work. If Grantee fails, the City secures the right to move, disconnect,	Section 3.2—Grantee will protect, alter, relocate, etc. lines on thirty (30) days written notice from City. If public funds are available to any other user of the ROW, City will notify Grantee of funds and make them

	relocate, etc., at the Grantee's expense. The City will not be liable if it conducts the work.	available to the Grantee.
Interference with Existing Utilities		
Section 3 (3)(d) Grantee shall not interfere other existing utilities and will comply with lawful City requirements	Section 3 (C) (4)—Grantee shall not place anything above or below ground that will interfere with existing utilities in the ROW and will comply with all lawful requirements of the City.	No such provision.
Relocation Due to Third Party		
Section 3 (3)(e) Grantee shall be given not less than 10 days to move facilities to permit moving of a building. Cost of moving to be paid by person moving a building	Section 3 (C) (5)(8)—On ten (10) days notice, Grantee shall move its wires or fixtures to permit the moving of a building. Person requesting must be permitted and subject to reimburse Grantee for the expense. Grantee will be given thirty (30) days written notice of Person authorized to use ROW and movement of its facilities to accommodate. Grantee will be paid in advance by such Person. Disputes between parties will be resolved by the City, if not covered by contract between the parties.	Section 3.3—Grantee will relocate facilities on reasonable prior written request, not less than thirty (30) days. Grantee will be paid in advance by such Person.

Tree and Vegetation Trimming		
Section 3 (3)(f) Grantee allowed to trim trees to prevent contact with wires and cables	Section 3 (C) (6)—Grantee shall follow City Code when removing, cutting, trimming, etc., of trees and vegetation. Grantee agrees not to injure trees, and all costs associated will be paid by Grantee, not the City or private property owner.	No such provision.
Notification of Property Owners		
Section 3 (3)(g) Best efforts to give reasonable prior notice to adjacent private property owners	Section 3 (C) (7)—Grantee must use best efforts to notify private property owners of work in ROW.	No such provision.
Undergrounding		
Section 3 (4) All new construction must be placed underground except for amplifier and pedestal mounted terminal boxes	Section 3 (D) (1) (2)—City may require Grantee to use existing poles, conduits, etc. City may require Grantee to place its facilities underground. Grantee may not place facilities where they will interfere with existing utility facilities. Consistent with City Code, Grantee may use overhead facilities, but in no way use overhead facilities where other utilities are underground. City may require overhead facilities to be placed underground.	Section 3.4—Grantee shall participate in planning projects of undergrounding all utilities. Grantee's relocation costs will be included in project funding, and Grantee will be entitled to reimbursement from public or private funds.

Installation of Facilities		
Section 2 (5) No poles, conduits, amplifier boxed, pedestal mounted terminal boxes, similar structures, or other wire holding structures shall be erected or installed by the Grantee without required permit of the City	Section 3 (E) (1) (2)—Grantee must obtain required permits or authorization from the City before placing any facilities or equipment, etc. Placement of facilities does not constitute a vested fee interest in ROW or City property. Facilities must be located and installed to cause minimal interference for private property owners.	No such provision.
Safety Requirements		
Section 3 (6) Grantee must follow City codes, NESC, FCC and all applicable codes	Section 3 (F) (1)—Grantee must follow safety practices of code, law and regulation. Grantee must maintain safety in preventing failure or accidents to the public or property.	No such provision.
Non-Interference		
No such provision	Section 3 (F) (2)—Grantee must not interfere with City's communications technology related to health, safety and welfare of residents.	No such provision.

Warning Devices		
No such provision	Section 3 (F) (3)—Grantee must install and maintain devices that warn Persons or government entities of work in the ROW.	No such provision.
Grantee Must be Member of One Call Notification		
No such provision	Section 3 (F) (4)—Grantee must be member of One Call Notification System and mark locations of underground facilities and identify same for City free of charge.	No such provision.
City Use of Facilities		
No such provision	Section 3 (G)—City has the right to use Grantee's poles, conduits, ducts, etc., free of charge provided it does not interfere with needs or operations of Grantee. Any costs associated will not be offset against franchise fees or other payments to City, NSAC or the Commission.	No such provision.
Removal of Facilities at Expiration		

Section 10 (4) If Grantee has failed to commence removal of the System, … declare all right, title, and interest to the System to be in the City …	Section 3 (H)—The City shall have the right at expiration of the Franchise to require the Grantee, at its expense, to remove all facilities and restore affected sites to original condition. Failure to do so results in facilities becoming property of the City. The City will not be liable to the Grantee for damage, loss or costs associated.	No such provision.
System Capacity and Technical Design		
Section 4 (1) Specifies a 750 MHz system, hybrid fiber coaxial capable of high speed data and other competitive services	Section 4 (A) (1) (a)—Requirements for characteristics, TBD per RFRP.	Section 3.5—Compliance with FCC standards. Upon receipt of customer complaints, City may inquire as to Grantee's compliance. Also see Section 5.3, restrictions on reporting requirements.
No such provision	Section 4 (1) (b)—Requires TDD/TYY equipment at Grantee's office and published phone numbers for same.	No such provision
N/A	Section 4 (A) (2)—Required features to be inserted as per RFRP.	No such provision.
No such provision	Section 4 (A) (3)—No channel mapping of PEG channels without prior approval of the City. Requires Grantee to agree to channel map as few non-PEG channels as possible in the attempt to	No such provision

	deliver high quality signals or comply with law.	
No such provision	Section 4 (A) (4)—Conduit is to be sized to accommodate future upgrades in attempt to obviate need for reopening of ROW.	No such provision.
	Section 4 (A) (5)—Grantee will not raise a claim that the system design and performance standards are unenforceable.	No such provision.
Integration of Advanced Technology		
No such provision	Section 4 (B) (1)—Grantee is responsible for periodic upgrades to meet the needs and interests of the community.	No such provision
Section 8(6) – May Require evaluations sessions at any time on 15 day written notice	Section 4 (B) (2)—Requires Grantee to report no more than every two (2) years to Commission and Member Cities on developments in technology and intent to incorporate those technologies. Report must include effect on use of PEG, I-Net, consumer equipment. Report must report how other cable companies have incorporated such technology and timetable for Grantee to do so.	No such provision.
System Construction and Line Extension		

Section 4 (2) Upgrade to be completed by November 2000	Section 4 (C) (1)—To be inserted per the RFRP	
Section 4 (4) The technical standards used in the operation of the System shall comply, at a minimum, with the technical standards promulgated by the FCC Also, Section 3(1) & (6)	Section 4 (C) (2)—System construction and maintenance in accordance with laws, codes, standards, etc.	No such provision.
No such provision	Section 4 (C) (3)—Grantee must notify City of any maintenance or construction that causes service disruption or physical construction. (example list included).	No such provision.
No such provision	Section 4 (C) (4)—Grantee shall provide, on request, detailed description of construction and design maps of facilities.	No such provision.
Section 8 (5) (c) If required by the City, Grantee shall furnish to and file with the City Administrator the maps, plats, and permanent record location and character of all facilities constructed …	Section 4 (C) (5)—Grantee shall maintain comprehensive as-built drawings (as they are updated) and provide copies to the City and Commission on request. Drawings must include both ROW and private property for investigation of complaints. Grantee will maintain routing diagrams and provide these to the City.	No such provision.
No such provision	Section 4 (C) (6)—Grantee, on request, shall meet with the City or Commission to provide updates on progress of construction. Throughout	No such provision.

	process Grantee shall inform the public/Subscribers on progress, location of crews and expected interruptions of service.	
Section 4 (D) (E) (F)—System Maintenance, Technical Standards, Tests and Inspections to be inserted per the RFRP		
FCC Reports		
Section 4 (7) FCC reports shall be filed with the City upon request	Section 4 (G)—Grantee will file the FCC reports of results of testing with City or Commission within ten (10) days of request.	No such provision.
Non-voice Return Capability		
Section 4 (9) Grantee is required to have nonvoice return communications	Section 4 (H)—Grantee is required to have technical capability for non-voice return communication.	No such provision.
Lockout Device		
Section 4 (10) Grantee shall make available lockout devices at no charge to subscriber	Section 4 (I)—Grantee is required, at request of subscriber, to provide a lockout device at no charge.	No such provision.

Types of Service		
Section 4(1)(e) – Grantee required to provide 30 days notice to subscribers and City of any channel changes	Section 4 (J)—Grantee required in changes in selection of programs or service to provide 30 days written notice to subscribers, Commission and City and comply with all applicable laws and franchise agreement.	No such provision.
Uses of System		
No such provision	Section 4 (K)—Grantee, on request, shall advise Commission and City of uses of System. City/Commission shall have right to conduct unannounced audits of use.	No such provision.
Additional Capacity		
No such provision	Section 4 (L)—Grantee shall notify City/Commission in writing in advance of additional fiber capacity, so capacity can be added for government and institutional use. City/Commission will notify Grantee within fifteen (15) days. Costs incurred by Grantee will not be deducted or offset against franchise fees or PEG support.	No such provision.

Home Wiring		
No such provision	Section 4 (M) (1)—Grantee will not restrict Subscriber's ability to change wiring located in Subscriber's dwelling as long as those changes do not interfere with FCC standards or ability of Grantee to provide services and collect payment from that Subscriber or others.	No such provision.
No such provision	Section 4 (M) (2)—Grantee must provide Subscribers notice of their rights regarding home wiring. Notice must include changing home wiring, the right to select a third party contractor, request that Grantee can provide service at hourly rate plus materials.	No such provision.
No such provision	Section 4 (M) (3)—Notice must inform Subscribers of its responsibility in changing wiring. Grantee may offer materials to Subscribers at cost plus reasonable rate of return.	No such provision.
No such provision	Section 4 (M) (4)—Grantee will cooperate with competitive providers and provide access to home run wiring in multiple dwelling units at pro rata cost. Exclusive contracts for provision of service will be null and void.	No such provision.

Customer Service Monitoring		
No such provision	Section 4 (N)—Grantee shall retain records to enable City/Commission to determine compliance with phone answering standards.	Section 5.3—Other Information Requests (see page 32 below)
Customer Service Standards		
No such provision	Section 5 (A)—Grantee shall comply with FCC customer service standards and additional or stricter standards contained in franchise or by ordinance or law adopted by state, City/Commission.	Section 4.1—Requires City to adopt FCC customer service standards.
Local Office and Office Hours		
Section 5 (8) Grantee shall maintain a location in the City or the Franchise territory encompassing any joint regulatory body of which City is a member for receiving Subscriber inquiries and bill payment.	Section 5 (B) (1)—Grantee will provide customer service center in franchise area with determined hours so that customers may: pay bills, return equipment, cancel service, etc. Grantee will provide a drop box at determined hours. Payments will be posted within 48 hours. Sixty (60) days notice on change of service center location to Subscribers. Grantee will, at request, pick up or retrieve equipment.	No such provision.

Closure of Service Centers		
No such provision	Section 5 (B) (2) (a) (b) (c)—In the event of closure of service center office in franchise area, Grantee will pick up and drop off equipment, etc., free of charge. Provide Subscribers with a pre-paid mailer. Enable payment over the phone free of charge.	No such provision.
Video Programming		
Section 4 (1) (e) Programming is the discretion of Grantee, provided Grantee provides thirty (30) day notice of change to City and Subscribers.	Section 5 (C)—Programming is the discretion of Grantee, provided Grantee provides thirty (30) day notice of change to City/Commission/Subscribers.	No such provision.
Regulation of Service Rates		
Section 5 (1) City may regulate rates to the extent permitted by federal law	Section 5 (D) (1)—Provides Commission authority over equipment/service rates as allowed by law.	No such provision.
Section 5 (1) Grantee shall give City and Subscribers at least one billing cycle notice of a rate change	Section 5 (D) (2)—Grantee to provide one billing cycle notice to Subscribers, City and Commission of changes in rates. Bills must be clear and understandable. Online bill payers	No such provision.

	must receive email of changes.	
No such provision	Section 5 (D) (3)—Grantee will respond to written requests for data by the City/Commission during petition for relief under effective competition.	No such provision.
Sales Procedures		
Section 5 (3) Grantee shall not exercise deceptive sales procedures	Section 5 (E)—Grantee will not engage in deceptive sales practices and inform non-Subscriber of all services. Commission must be notified of package changes.	No such provision.
Subscriber Inquiry and Complaints		
Section 5 (4) Grantee to have publically listed toll free number, twenty four (24) hours per day, seven (7) days per week.	Section 5 (F) (1)—Grantee to have publically listed toll free number, twenty four (24) hours per day, seven (7) days per week.	No such provision.
Section 5 (4) Establishes guidelines for answering the phone, telephone lines, personnel, and busy signal guidelines.	Section 5 (F) (2)—Establishes guidelines for answering the phone, telephone lines, personnel, and busy signal guidelines. Requires reporting of compliance.	No such provision.

Section 5 (4) Grantee will respond to written requests within thirty (30) days and provide City or its designee with copy of response.	Section 5 (F) (2)—Grantee will respond to written requests within thirty (30) days and provide Commission with copy of response.	No such provision.
Section 5 (4) Grantee will prepare, maintain written records of complaints and provide them to Commission on request.	Section 5 (F) (4)—Grantee will prepare, maintain written records of complaints and provide them to Commission on request.	Section 5.3 (ii)--No information provided unless there is reasonable basis for inquiry. Section 5.3 (iii)—City shall contact Grantee prior to information request to allow cure. Section 5.3 (iv)—Grantee will be given draft of results to review before publication. Section 5.3 (v)—Grantee shall be given advance notice of meetings that discuss review.
Section 5 (4) Grantee will commence working on service problems thirty six (36) hours on service interruptions.	Section 5 (F) (5)—Grantee will commence working on service problems twenty four (24) hours on service interruptions.	No such provision.
Section 5 (4) Establishes parameters and time windows for appointments for service calls	Section 5 (F) (6)—Establishes parameters and time windows for appointments for service calls.	No such provision.
Section 5 (4) (b) Grantee shall respond to written complaints with a copy to City or its designee within 30 days	Section 5 (F) (7)—Grantee will respond to City/Commission complaints in a timely manner.	No such provision.

Subscriber Contracts		
Section5 (5) Grantee must file with the Commission any standard contract with subscribers, to include length and terms and must make same available at their offices.	Section 5 (G)—Grantee must file with the Commission any standard contract with subscribers, to include length and terms and must make same available at their offices and NSCC.	No such provision.
Section 5 (6) Grantee will prorate the monthly rate to subscribers on establishment or termination of service.	Section 5 (H) (1)—Grantee will prorate the monthly rate to subscribers on establishment or termination of service.	No such provision.
No such provision	Section 5 (I)—Grantee shall ensure that persons or entities not receiving Cable service not be assessed franchise fees, unless permitted by law.	No such provision.
Section 5 (6) … Grantee shall prorate the monthly bill on the basis of the number of days in the period …	Section 5 (J) (1) (2)—Refunds will be issued promptly not later than: a. next billing cycle; b. return of equipment. Credits issued on Subscriber's next bill.	No such provision.
Section 5 (7) Grantee not to issue late fees unless service has been provided and notification of Subscriber. Late fees will not exceed actual cost.	Section 5 (K)—Grantee not to issue late fees unless service has been provided and notification of Subscriber. Late fees will not exceed actual cost and amounts must be filed	No such provision.

	with the Commission.	
No such provision	Section 5 (L) (1) (a)—Grantee will provide at installation and every twelve months: instructions on use; billing and complaint procedures; schedule and rates; channel positions; prices and options; policies and rights of Subscribers. Section 5 (L) (2)—Copies of previous subsection provisions to be filed with City and Commission.	No such provision. No such provision.
No such provision	Section 5 (L) (3)—All Grantee promotional materials must be clear and accurately reflect rates after the end of promotions.	No such provision.
Exclusive Contracts and Anticompetitive Acts Prohibited		
No such provision	Section 5 (M) (1)—Grantee may not require an exclusive contract of Subscribers.	No such provision.
No such provisions	Section 5 (M) (2)—Grantee shall not engage in anti-competitive acts against subscribers and multiple dwelling units.	No such provision.
Operations and Administration Provisions		

Section 8 (1) The City Administrator or designee will have jurisdiction over the System and Grantee's operations.	Section 8 (A)—The City Manager or designee will have jurisdiction over the System and Grantee's operations.	No such provision.
Section 8 (2) The Commission will have the authority to administer and support the franchise. The Grantee shall cooperate with such delegate of the City.	Section 8 (B)—The Commission will have the authority to administer and support the franchise. The Grantee shall cooperate with the Commission.	No such provision.
Periodic Evaluations		
Section 8 (6) City can require evaluations on fifteen (15) days notice.	Section 8 (F) (1)—City or Commission can require evaluations on fifteen (15) days notice.	Section 5.3—Reports and meetings. See page 32 below.
Section 8 (6) Evaluation sessions may address various aspects of the franchise, court and FCC rulings, changes in law, etc., or any topic the City or Commission deems relevant.	Section 8 (F) (2)—Evaluation sessions may address various aspects of the franchise, court and FCC rulings, changes in law, etc., or any topic the City or Commission deems relevant.	Section 5.3 (ii)--No information provided unless there is reasonable basis for inquiry. Section 5.3 (iii)—City shall contact Grantee prior to information request to allow cure. Section 5.3 (iv)—Grantee will be given draft of results to review before publication. Section 5.3 (v)—Grantee shall be given

		advance notice of meetings that discuss review.
Section 8 (6) After evaluation, Grantee will meet with City to discuss changes to the franchise that are feasible.	Section 8 (F) (3)---After evaluation, Grantee will meet with City or Commission to discuss changes to the franchise that are feasible.	No such provision.
Finance and Insurance		
Section 9 (1) Performance bond of \$500,000 Section 9 (1) Sets forth time to correct violations Section 9 (1) If franchise is revoked, City may collect for damages from the Performance Bond. Section 9 (1) Provides for the return of the Performance Bond to the Grantee Section 9 (1) The Performance Bond will not interfere with other rights reserved by the City	Section 9 (A) (1)--Performance Bond of \$3,000,000. Section 9 (A) (2)—Provides ability to extend time by the Commission. Section 9 (A) (3)—If franchise is revoked, City or Commission may collect for damages from the Performance Bond. Section 9 (A) (4)—Provides for the return of the Performance Bond to the Grantee. Section 9 (A) (5)—The Performance Bond will not interfere with other rights reserved by the City and the Commission.	Section 8.5—Performance Bond of \$500,000. City not allowed to draw on it if in dispute process.

Letter of Credit and Liquidated Damages		
Section 9 (2) Provides for a letter of credit in the amount of $25,000	Section 9 (B) (1 (2))—Letter of Credit for $25,000.	No such provision.
Section 9 (2) Collection from Letter of Credit for acts/omissions by Grantee to City or any Person.	Section 9 (B) (3)—Collection from Letter of Credit for acts/omissions by Grantee to City, Commission or any Person.	Section 8.4—Liquidated Damages to the City (solely).
Section 9 (2) Failure to timely construct system in timely manner $500 per day.	Section 9 (B) (3) (a)—Failure to timely construct system or I-Net in timely manner $1,000 per day.	Section 8.4 (v) (1)—Failure to construct as provided in franchise, $50 per day.
Section 9 (2) Failure to provide data, reports, etc., $250 per day.	Section 9 (B) (3) (b)—Failure to provide data, reports, etc., $500 per day.	Section 8.4 (v) (3)—Failure to provide data, reports, etc., $50 per day.
Section 9 (2) after fifteen day notice, failure to comply with construction, operation or maintenance standards, $500 per day.	Section 9 (B) (3) (c)—after fifteen day notice, failure to comply with system requirements, $1,000 per day.	No such provision.
Section 9 (2) Failure in PEG provisions, $500 per day.	Section 9 (B) (3) (d)—Failure in PEG provisions, $1,000 per day.	Section 8.4 (v) (5)—Failure in PEG provisions $50 per day.
Section 9 (2) Breach of contract or agreement $500 per day.	Section 9 (B) (3) (e)—Breach of contract or agreement $1,000 per day.	Section 8.4 (v) (4)—Violation of transfer provision $250 per day.

Section 9 (2) Failure to comply with any provision for which a penalty is not included, $250 per day.	Section 9 (B) (3) (f)—Failure to comply with any provision for which a penalty is not included, $500 per day.	No such provision.
Section 9 (2) Each violation shall be considered separately.	Section 9 (B) (4)—Each violation shall be considered separately.	No such provision.
Section 9 (2) Conditions for drawing on Letter of Credit.	Section 9 (B) (5) (6)—Conditions for drawing on Letter of Credit.	No such provision.
Section 9 (2) Periodic replacement and replenishment of the Letter of Credit.	Section 9 (B) (7) (8) (9)—Periodic replacement and replenishment of the Letter of Credit.	No such provision.
Section 9 (2) Draw on the Letter of Credit will not affect any other right or remedy of the franchise agreement.	Section 9 (B) (10)—Draw on the Letter of Credit will not affect any other right or remedy of the franchise agreement.	No such provision.
Indemnification of the City and Commission		
Section 9 (3) Broad description of those indemnified and activities defined.	Section 9 (C) (1) (2) (3)—Broad description of those indemnified and activities defined.	Section 8.6—Narrow definition of those indemnified and activities defined.

Insurance		
Section 9 (4) Broad definition of requirements for liability insurance.	Section 9 (D) (1)—Broad definition of requirements for liability insurance.	Section 8.6—Narrow definition of requirements for liability insured.
Section 9 (4) $500,000—property damage to a person. $2,000,000—property damage to property $1,000,000---personal injury to one person. $2,000,000---personal injury for two or more during any one incident.	Section 9 (D) (2) (a to g)— $2,000,000—property damage to a person. $2,000,000—property damage to property $2,000,000---personal injury. $2,000,000---personal injury during any one incident. $2,000,000---for all other liability. $2,000,000---auto liability: separate for bodily injury and death per occurrence; bodily injury and death to any one person; property damage per occurrence.	Section 8.7— $1,000,000---personal injury or death to one person. $2,000,000---personal injury or death of two or more persons. $500,000---for property damage to any one person. $2,000,000---property damage for one act or occurrence.
Section 9 (4) Insurance policies are to be maintained for the term of the franchise.	Section 9 (D) (3 to 6)—Insurance policies are to be maintained; insurers qualified to do business in the State; insurance policies must be available for review by the City and Commission; failure to comply with insurance requirements as material breach.	No such provisions.

Revocation		
Section 10 (1) City reserves the right to revoke in case of: a. Grantee violates material provisions; b. Grantee has attempted to evade terms of franchise; c. Grantee has practiced fraud or deceit. City may revoke without hearing if Grantee is adjudged bankrupt.	Section 10 (A) (1)—City reserves the right to revoke in case of: a. Grantee violates material provisions; b. Grantee has attempted to evade terms of franchise; c. Grantee has practiced fraud or deceit. City may revoke without hearing if Grantee is adjudged bankrupt.	8.1—If Grantee has not complied with material provisions, City will notify Grantee.
Section 10 (2) City will provide written notice to cure. Grantee will have thirty (30) days to correct.	Section 10 (B)[2](1)—City will provide written notice to cure. Grantee will have thirty (30) days to correct.	8.2—Grantee will have thirty (30) days to: respond by contesting; cure the default; or initiate reasonable steps to begin to cure.
Section 10 (2) Grantee will be provided public hearing by the City Council; the City will provide Grantee written notice of its decision.	Section 10 (B) (2)—Grantee will be provided public hearing by the City Council; the City will provide Grantee written notice of its decision.	8.3—If Grantee fails to respond or default is not remedied in thirty (30) days, the City will provide a public hearing not less than ten (10) days after initial thirty (30) day period.
Section 10 (2) After public hearing and on written notice of revocation, termination or shortening length of franchise, Grantee may appeal in state, federal court.	Section 10 (B) (3)—After public hearing and on written notice of revocation, termination or shortening length of franchise, Grantee may appeal in state, federal court.	No such provision.

[2] Wrongly designated as Section 10 (13).

Section 10 (3) Grantee shall not abandon the system without three (3) months' notice, must compensate City for abandonment.	Section 10 (C)---Grantee shall not abandon the system without three (3) months' notice, must compensate City for abandonment.	No such provision.
Section 10 (4) City has right to require Grantee to remove its system on termination, forfeiture or abandonment of franchise. If Grantee fails, City can collect on Letter of Credit or Performance Bond and the City owns the system.	Section 10 (D) (1) (2)---City has right to require Grantee to remove its system on termination, forfeiture or abandonment of franchise. If Grantee fails, City can collect on Letter of Credit or Performance Bond and the City owns the system.	No such provision.
Sale or Transfer of Franchise		
Section 10 (5) No sale or transfer of franchise or transfer of stock without approval of the Commission. Including intra-company transfers or sales, except for indebtedness.	Section 10 (E) (1)—No sale or transfer of franchise or transfer of stock without approval of the Commission. Including intra-company transfers or sales, except for indebtedness.	Section 6.1---Grantee needs consent of City for transfer, defined as 51% owner interest. No consent needed for intra-company transfers, including to secure indebtedness.
Section 10 (5) Defines controlling interest as working control, to include fifteen percent (15%) or more by one person and acquisition by one person of five percent (5%) or more.	Section 10 (E) (2)---Defines controlling interest as working control, to include fifteen percent (15%) or more by one person and acquisition by one person of five percent (5%) or more.	No such provision.
Section 10 (5) Grantee shall file all documents (defined in this section) and	Section 10 (E) (3 (a) (b) (c)---Grantee shall file all documents (defined in this section)	No such provision.

other documents as City may require.	and other documents as Commission may require.	
Section 10 (5) Commission will have time defined by federal law to review the transfer request.	Section 10 (E) (4)---Commission will have time defined by federal law to review the transfer request.	No such provision.
Section 10 (5) City and Commission cost associated with the transfer request will be reimbursed by the Grantee. Grantee may recover those expenses but not itemize them.	Section 10 (E) (5)---City and Commission cost associated with the transfer request will be reimbursed by the Grantee. Grantee may recover those expenses but not itemize them.	No such provision.
Section 10 (5) Transferee becomes signatory to the Franchise.	Section 10 (E) (6)---Transferee becomes signatory to the Franchise.	No such provision.
Section 10 (5) City will have the right to purchase the system.	Section 10 (E) (7)---City and/or Commission will have the right to purchase the system.	No such provision.
Section 10 (5) City must indicate in writing within sixty (60) days its intent to purchase. City cannot exercise this right if it has approved an assignment or sale.	Section 10 (E) (8) (a) (b)---City and Commission must indicate in writing within sixty (60) days its intent to purchase. City and Commission cannot exercise this right if it has approved an assignment or sale.	No such provision.
Section 10 (5) No sale or transfer in	Section 10 (E) (9)---No sale or transfer in	No such provision.

event of Grantee noncompliance, City retain right to enforce compliance even if noncompliance issues arise after approval.	event of Grantee noncompliance, City and Commission retain right to enforce compliance even if noncompliance issues arise after approval.	
No such provision	Section 10 (E) (10)---Transfer or sale without City or Commission consent is considered impairment of performance.	No such provision.
Protection of Individual Rights		
Section 11 (1) Discriminatory practices prohibited.	Section 11 (A)---Discriminatory practices prohibited.	No such provision.
Section 11 (2) No monitoring of individual viewing patterns without the Subscriber's permission. No data on viewing patterns can be sold or made available to third party, without Subscriber's permission. No permission needed for system wide or individual electronic sweeps to verify system integrity and for billing purposes.	Section 11 (B) (1) (2) (3)---Grantee will provide the City and Commission with all documents, but not violate subscriber privacy. City and Commission reserve the right to question redactions. No monitoring of individual viewing patterns without the Subscriber's permission. No data on viewing patterns can be sold or made available to third party, without Subscriber's permission. No permission needed for system wide or individual electronic sweeps to verify system integrity and for billing purposes.	No such provision.

Unauthorized Connections or Modifications		
Section 12 No unauthorized connections or modifications are allowed by any person, group, government body, etc., without Grantee authorization. It is unlawful to remove or destroy any part of the system. Provides penalties for violation of this section.	Section 12 (A) (B) (C)---No unauthorized connections or modifications are allowed by any person, group, government body, etc., without Grantee authorization. It is unlawful to remove or destroy any part of the system. Provides penalties for violation of this section.	No such provision.
Miscellaneous Provisions		
Section 13 (1) Renewal will be performed in accordance with all laws for a term limited to fifteen (15) years.	Section 13 (A)---Renewal will be performed in accordance with all laws for a term limited to fifteen (15) years.	Section 2.2 and 2.3---Franchise term of ten (10) years, all applicable laws apply.
Section 13 (2) Work performed by third parties must comply with franchise, Grantee must provide notice of such third parties to City and Commission.	Section 13 (B)---Work performed by third parties must comply with franchise, Grantee must provide notice of such third parties to City and Commission.	No such provision.
Section 13 (3) Amendment of franchise by written agreement between Grantee and City. Retention of rights of City to amend as provided by law.	Section 13 (C)---Amendment of franchise by written agreement between Grantee and City. Retention of rights of City to amend as provided by law.	Section 10.5---Modification by written agreement between City and Grantee.

Section 13 (4) Compliance with all laws, any such laws affecting a certain section will not invalidate entire franchise, parties will negotiate to reconstitute any parts of the franchise to comply with all laws.	Section 13 (D) (1) (2) (3)---Compliance with all laws, any such laws affecting a certain section will not invalidate entire franchise, parties will negotiate to reconstitute any parts of the franchise to comply with all laws.	Section 10.4---Provides for severability of parts of the franchise in attempt to comply with law.
Section 13 (5) Grantee shall not be relieved due to non-enforcement of any part of the franchise. City and Commission retain all rights available and do not waive rights for failure to exercise any rights.	Section 13 (E) (F)---Grantee shall not be relieved due to non-enforcement of any part of the franchise. City and Commission retain all rights available and do not waive rights for failure to exercise any rights.	Section 10.7---Grantee does not waive rights under the franchise.
Section 13 (6) Grantee acknowledges it has reviewed terms and conditions and their validity and the power of the City to set terms and conditions.	Section 13 (G)---Grantee acknowledges it has reviewed terms and conditions and their validity and the power of the City to set terms and conditions.	No such provision.
No such provision	Section 13 (H)---Franchise is governed by the laws of Minnesota, disputes will be venued in Ramsey County District Court.	No such provision.
No such provision	Section 13 (I)---Force Majeure.	Section 10.1---Force Majeure (includes work delays due to other utilities).
No such provision	Section 13 (J)---The Commission and NSAC are deemed third party beneficiaries to the	Section 10.6---No rights to third parties.

	franchise.	
No such provision	Section 13 (K) (L)---Captions do not affect the meaning of the franchise. This franchise constitutes the entire agreement except for those enumerated in Section 2 (E).	Section 10.3---The franchise supersedes all previous documents.
Section 14 Terms of acceptance.	Section 14---Terms for acceptance of the franchise and deliverables, such as Performance Bond, Letter of Credit, PEG Access Support Agreement with NSAC.	No such provision.

In the Comcast Franchise Only
Section 3.2—Grantee will protect, alter, relocate, etc., lines on thirty (30) days written notice from City. If public funds are available to any other user of the ROW, City will notify Grantee of funds and make them available to the Grantee.
Section 5.3 (ii)-- No such information request shall be initiated unless there is a reasonable basis for inquiring as to compliance, such as customer complaints about the subject matter of the inquiry, the failure to provide reports on the subject matter as required by other sections of this Franchise Agreement, or marketing or other communications from the Grantee indicating noncompliance. Section 5.3 (iii)— In the interests of cost savings and efficiency, prior to serving an information request upon the Grantee, the City shall contact Grantee's local representative to discuss the subject matter of concern to determine whether a prompt and informal solution is available (i.e., Grantee is able to satisfactorily explain why there is no violation or is willing to cure the alleged noncompliance). Section 5.3 (iv)— To expedite the review process and to avoid prolonged disputes, prior to distributing or publishing the results of an the review, the City shall afford Grantee a minimum of 15 business days to review the draft results and to respond to the findings therein so that the reviewer may take into consideration any additional information Grantee provides. Section 5.3 (v)— Grantee shall be provided with advance written notice of any meeting at which the results of the audit or review will be presented and shall be afforded an opportunity to respond to the results in writing and in person at any such meeting. Section 5.4-- <u>Procedures Required to Initiate Audit/Review or Information Request.</u> Because audits/reviews and information requests can be time consuming and expensive for the City and Grantee, prior to commencing a franchise fee or PEG fee audit or review or an information request as set forth in the subsections above: (i) The City staff or designee wanting to initiate the audit/review or information

request shall present the proposed audit/review or information request to the City for approval. The proposal shall include the proposed inquiry document, the estimated costs of performing the audit or review, an explanation of the basis for the inquiry, and a representation that an attempt to resolve the inquiry informally with Grantee was made.

(ii) Grantee shall have advance written notice of the meeting at which the above proposal will be presented and shall have the opportunity to address the proposal with the City prior to approval of the audit/review or information request.

Section 5.5-- Resolution of Disputes in Audits or Information Requests. In the event of a dispute between the City and Grantee regarding the Grantee's production of responsive information or regarding the result of an audit\review or information request, the parties agree to first attempt to resolve the dispute in a direct discussion. Upon the failure of direct discussions, the parties shall mediate the dispute in nonbinding mediation before a jointly-selected mediator whose fee shall be split between the parties. If mediation is unsuccessful, the parties may thereafter pursue such other remedies and processes as may be available.

Section 6.1---Grantee needs consent of City for transfer, defined as 51% owner interest. No consent needed for intra-company transfers, including to secure indebtedness.

Section 9---"Competitive Equity provision" which requires the same terms of the franchise be applied to the new entrant.

Section 10.7---Grantee does not waive rights under the franchise.

Section 10.3---The franchise supersedes all previous documents.

Section 10.6---No rights to third parties.

<table>
<tr><td colspan="3">Note: The Comcast agreement also includes a "Competitive Equity provision" which requires the same terms of the franchise be applied to the new entrant.</td></tr>
<tr><td colspan="3">Definitions
(included in each document)</td></tr>
<tr><td>Section 1</td><td>Section 1</td><td>Section 1</td></tr>
<tr><td></td><td>Actual cost.</td><td></td></tr>
<tr><td></td><td>Affiliate.</td><td>Affiliate to not include certain entities.</td></tr>
<tr><td>Basic Cable Service</td><td>Basic Cable Service.</td><td></td></tr>
<tr><td></td><td>Broadcast Channels.</td><td></td></tr>
<tr><td>Cable Service</td><td>Cable Service.</td><td></td></tr>
<tr><td>Cable System</td><td>Cable System.</td><td></td></tr>
<tr><td></td><td>Channel.</td><td></td></tr>
<tr><td>City</td><td>City.</td><td></td></tr>
<tr><td></td><td>City Code.</td><td></td></tr>
<tr><td>City Council</td><td>City Council.</td><td></td></tr>
<tr><td>Class IV Cable Channel</td><td>Class IV Cable Channel.</td><td></td></tr>
<tr><td></td><td>Commission.</td><td>Commission.</td></tr>
<tr><td>Commercial Need</td><td></td><td></td></tr>
<tr><td>Converter</td><td>Converter.</td><td></td></tr>
<tr><td>Drop</td><td>Drop.</td><td></td></tr>
<tr><td></td><td>Educational Access Channel.</td><td></td></tr>
<tr><td></td><td></td><td>Effective Date.</td></tr>
<tr><td>FCC</td><td>FCC.</td><td></td></tr>
<tr><td>Franchise</td><td>Franchise.</td><td></td></tr>
</table>

	Governmental Access Channel.	
Grantee	Grantee.	
Gross Revenue	Gross Revenue.	Gross Revenue.
	Information Service.	
Installation	Installation.	
Institutional Network	Institutional Network.	
Lockout Device	Lockout Device.	
Memorandum of Understanding		
	Member Cities.	
	Node.	
	Normal Business Hours.	
	Normal Operating Conditions.	
North Suburban Access Corporation	North Suburban Access Corporation.	
North Suburban System	North Suburban Franchise Area.	Franchise Area.
Pay Television		
	PEG.	
Person	Person.	
	Public Access Channel.	
Right of Way	Right of Way.	
Right of Way Ordinance	Right of Way Ordinance.	
Standard Installation	Standard Installation.	
	State.	
Subscriber	Subscriber.	

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

SUPPLEMENTAL STAFF REPORT ON THE COMCAST FORMAL PROPOSAL FOR RENEWED FRANCHISES WITH THE NSCC MEMBER CITIES

Introduction and Overview

The purpose of this supplemental staff report is to provide the staff's analysis of the formal franchise renewal proposal and exhibits submitted by Comcast on December 20, 2013, and the extent to which the proposal meets the needs identified in the Staff Report and Request for Renewal Proposal (RFRP), which was issued by the North Suburban Communications Commission (NSCC) on July 29, 2013. Specifically, the supplemental staff report will address the top four issues for renewed franchises with the ten member cities: 1) the continued offering of the fiber-based Institutional Network (I-Net) which connects local government institutions within the ten member cities, including municipal facilities, Ramsey County facilities, and several schools (both K-12 and post-secondary) at no charge to the users; 2) funding for Public, Educational and Government (PEG) communications in the ten member cities, and channel capacity for transmission of the eight PEG channels in both SD and HD; 3) Comcast's past customer service performance and 4) two of the issues from the report prepared by Mr. Andrew Elson of E-Consulting Group (Exhibit 2 of the Comcast proposal). This Supplemental Staff Report should be considered with the other consultant's reports (CGB Communications, Front Range Consulting and The Buske Group). Attached as Exhibit 1 to this report is an initial comparison of the franchise agreement terms included in the RFRP to Comcast's Proposal.

EXECUTIVE SUMMARY

I-Net Issues

Since Comcast notified the NSCC member cities in October and November 2010 of its desire to renew the cable television franchises, the NSCC and its staff have been engaging in the renewal processes set out in federal law. The NSCC undertook an extensive assessment of our community's cable-related communications needs and interests (both from a subscriber and community user standpoint) and evaluated the company's performance under the current franchise. The Staff Report summarized these needs and identified key issues to be addressed in the renewed franchises. Those key issues – retention of the fiber and HFC based Institutional Network (I-Net) linking local government facilities and the community media center, CTV North Suburbs; retention of both operational and capital funding for community media; and retention of the eight PEG access channels currently programmed and simulcast of several of those channels in HD – were identified as community needs and are included in the RFRP.

The NSCC RFRP on the I-Net recognized that Comcast has already been compensated for the six strands of fiber provided in the 1998 franchise for local government and community media use. Comcast passed through to subscribers in the PEG fee itemized on their bills the cost attributed by the company (approximately $567,000) primarily for those six fibers which are embedded in the company's network. The users of the I-Net (the cities, schools, libraries and NSCC/NSAC) have provided their own equipment to connect to and manage the network, and city and NSCC/CTV staff oversees and maintains the network. As a result, the cost to Comcast to maintain the I-Net is very small. However, the benefits to the NSCC/CTV and the member cities, such as substantial cost savings, are significant. Comcast's proposal to impose new charges for these already paid for networks do not meet the NSCC's needs or the RFRP. Staff also believes that Comcast is incorrect that the Cable Act only allows the I-Net to be used for PEG transport services. The current I-Net is used for both the PEG transport services and a dedicated private communications network for the governmental facilities, and the RFRP requested a continuation of that practice at essentially no cost to the NSCC or its member cities.

These I-Net benefits include, of course, the upstream and downstream transmission of video programming for the seven public and educational channels and the 10 discrete city channels. In addition to programming the four public channels, the I-Net enables CTV North Suburbs to provide programming and channel management, as well as webstreaming, services for nine of the ten cities and two of the three school districts, saving the cities and the school districts money that would otherwise need to be spent on staff time and the purchase of playback and webstreaming equipment and software.

In addition, the cities, schools and Ramsey County use the I-Net non-video data applications and services, including a telephone system and Internet access shared among eight of the ten cities and CTV North Suburbs and administrative services, such as financial systems and GIS applications. The Ramsey County Library uses the I-Net to connect its four branch libraries in Shoreview, Roseville, Mounds View and New Brighton, allowing for the technology consolidation to support their daily operations, as well as high speed and reliable access to collections, applications, programming and the Internet. The collaboration among all of these public institutions not only saves taxpayer dollars, but provides for more efficient and effective local government and community institution operations. The Cable Act has recognized the value to the local community of these private communications networks and has allowed these I-Nets to be part of the franchise agreement for a cable operator to use the public rights-of-way. It should be pointed out again that the local government users of the I-Net, including NSCC/NSAC, have paid for nearly all of the equipment and software to "light up" the fibers that they use and for the staff that manage and maintain that equipment and software. Comcast's proposal would significantly increase the non-PEG I-Net costs which will significantly burden the non-PEG users unfairly and would serve to enrich Comcast's profits on a fully paid for network.

However, despite the fact that Comcast has already been compensated for the I-Net and the fact that its maintenance costs are minimal, Comcast now wants to charge for its use. For the use of the I-Net to transmit video programming, Comcast proposes to charge subscribers another $645,000 over the 10-year franchise by passing through $0.18 per month per subscriber. For the non-video uses, Comcast would charge $1,675.80 per month per location for network interconnectivity and $750 per month per rack/cabinet for collocation. For this charge, "…Comcast will agree to continue to provide institutional-network services comparable to that provided today" to recover what the company believes is the "fair-market value" of that portion of the I-Net. Based on the language in the proposal, it is frankly unclear whether Comcast is proposing to provide managed services for the I-Net or whether the company is intending for the local governmental users and NSCC/NSAC to pay more while they continue to buy and maintain their own equipment as they do now. Comcast's proposal on the I-Net does not meet the needs and interests identified in the Staff Report and RFRP.

PEG Funding

The current level of operational and capital funding for the community media facility operated by the North Suburban Access Corporation, dba CTV North Suburbs, in 2014 amounts to a little over $1.5 million. In addition, the NSCC receives a Scholarship Grant that provides educational scholarships to post-secondary students pursuing degrees in communications and paid internships at CTV North Suburbs. These student interns work with the cities, as well as with public and educational access producers and volunteers.

In order to assess our future needs and interests, the NSCC commissioned The Buske Group to determine the future needs and interests. As summarized in the Staff Report and RFRP, the capital needs were approximately $14,000,000 over the ten-year proposed franchise term. Additionally, the NSCC proposed that Comcast essentially continue to voluntarily support the operational needs of the NSCC/NSAC.

Incorrectly asserting that federal law prohibits the payment of operational funding, Comcast's formal proposal would provide only $0.44 per subscriber per month for PEG capital needs only. Depending on the number of subscribers, that would range from approximately $153,000 per year to approximately $158,000 per year, compared to the nearly $100,000 in annual capital grants in years 1 through 15 of the current franchise. This proposed level of capital funding is drastically below the identified needs and interest from the Buske Report and should serve as a basis for a preliminary denial of the Comcast proposal. Comcast has provided limited explanation in its proposal as to how the dramatically reduced capital funding could meet the capital needs of the NSCC/NSAC over the next ten years. Although this is an increase in capital funding for CTV North Suburbs, Comcast has agreed historically that the NSCC/NSAC could use the currently operational and capital funding at its own discretion and the proposed lack of voluntary operational funding threatens the organization's continued existence.

In fact, failure to provide sufficient voluntary operational funding throughout the duration of the 10-year franchise would likely mean that CTV North Suburbs would have to shut its doors unless funding is provided by the member cities whereby essentially all of the franchise fees are used for PEG operational funding. That would mean that Comcast essentially pays no rent to the member cities for using the public rights-of-way, which seems unfair at best. Not only would that affect public and community access video production and programming, both for individual producers as well as community organizations, but it would affect local government and educational access video production and programming services as well. Those include covering city parades and festivals; school sports, concerts and graduations; local election coverage; programs about city services and activities; and coverage of special events, such as multiple hearings over the years on the TCAAP property and a series of hearings held by the Mounds View School District to discuss school closings. Further, it is because of the program playback infrastructure available at CTV North Suburbs community media center that the organization can offer low cost channel programming and webstreaming services to the cities and schools. That is all at risk with Comcast's proposal and would suggest that the local community needs and interest will not be met.

Comcast asserts in part that its refusal to continue voluntarily paying operational support, which the franchisee has been paying since 1991, is because the amount of the PEG fee collected in the NSCC cities makes it uncompetitive with other multi-channel video programming providers, such as DirecTV and Dish Network. However, the amount of the PEG fee has increased much more slowly than that of Comcast's own fees for its cable services. In addition, despite the company's claim that subscribers are unwilling to pay the PEG fee, no subscribers came forward at the April 17 public hearing on Comcast's formal proposal to complain about the PEG fee, nor has the NSCC received any written comments in conjunction with the public hearing complaining about the PEG fee or its amount. The bottom line is that the PEG grants – capital, operational and scholarship – cost Comcast nothing. They are a pass-through on subscriber's bills, and since 1991 staff has received no complaints about the PEG fee, nor did staff receive any comments in conjunction with the public hearing.

<u>Channel Capacity</u>

The member cities' current franchise agreements specify that 12 channels of 6 MHz each will be reserved for public, educational and government access use. Four of those channels were "loaned" back to the company, although without any expectation that they would be returned to community programming. Of the remaining eight channels, three are used for public/community; three are used for educational programming by the three public school districts serving the member cities; one is used for government access, with each of the cities' programming distributed discretely within the their own municipal boundaries; and one is used for programming distributed by NASA via satellite. Because a number of cable subscribers were interested in the service, NSAC/CTV North Suburbs agreed to put the NASA programming on one of the community channels when a previous franchisee no longer wanted to carry it.

Comcast's formal proposal would cut the number of Standard Definition (SD) channels from eight to three and add one High Definition channel, with the possibility of adding one additional SD channel in the future. (Comcast proposal p. 74) The criteria for getting the HD channel is "not less than 5 hours per day, 5 days per week of locally produced, non-character generated, first-run programming (emphasis added)," a standard that does not appear to apply to any commercial channel on Comcast's system. In fact, some cable programming services do not cablecast ANY first-run programming. Further, Comcast's emphasis on first-run programming devalues the PEG channels role as a video archive of the community. There is no requirement in federal law the puts a "first-run" restriction on PEG programming and would infringe on the NSAC's freedom of speech protections. Whether it is a live broadcast, i.e., first-run, or a replay of a previous broadcast does not increase or decrease its value to the community. As such, the NSCC cannot recommend adoption of the Comcast proposal on either the number of SD and HD channels offered by Comcast nor the hurdles imposed in gaining new HD programming.

In addition, failure to transition PEG programming to HD will marginalize this programming and ensure that it will NOT be watched. The reality is that cable subscribers with HD television sets tend to watch only HD channels/programming services, and the trend is that most, if not all, programming services will be provided in HD or its successor technology (likely 4K). CTV North Suburbs has already invested in HD and HD-capable equipment, and a substantial amount of the programming produced at CTV North Suburbs, as well as that turned in for cablecast, is already in the HD format. At some point in the future, it will difficult to purchase SD production equipment.

But it is the content of these channels and what they represent that is most important. The community channels provide a variety of programming for local audiences that are not available elsewhere on the cable system, and they give a voice to people and groups who are often not heard or seen. In 2013, community producers and volunteers contributed almost 17,000 hours to produce 558 programs for the PEG channels, and CTV staff produced another 206 programs. These include city parades and festivals, school sports and concerts (both from K-12 and post-secondary schools); election coverage; high school robotics competitions; talk shows about community people, organizations and activities, such as "Tale of Ten Cities;" community band and orchestra concerts (The Shoreview Northern Lights Variety Band, the Roseville Community Band, the Roseville Strings); and a program by and about people with disabilities, “Disability Viewpoints,” that has been produced at CTV North Suburbs for 15 years. Losing five SD channels will severely impact how many of these locally produced programs will be cablecast in prime time. Difficult choices will have to be made as to whether, for example, “Disability Viewpoints” will be shown over the “Tale of Ten Cities.” It will also impact the availability of discrete educational channels for the three school districts as they are forced to all share one channel. With all of the PEG channels being moved into a digitally compressed technology, there is no question that Comcast cannot claim bandwidth scarcity. Rather, it is the company’s desire to reduce the availability of PEG programming in order to allow it to add more commercial programming services for which it can charge subscribers.

But community media and CTV North Suburbs is more than programming.

The Youth Media Program at CTV North Suburbs had 161 participants in 2013. These high school students produced 64 programs and contributed 350 volunteer hours to cover the “Night to Light MN” at the Guidant John Rose Oval tree lighting ceremony in Roseville, the Mounds View Community Theatre production of “Les Miserables,” the North Oaks Vintage Baseball Association baseball game, and the Roseville Area High School dance recital. The goal of the Youth Media Program is not to create professional videographers, although some may pursue that career, but to give them opportunities to use their academic studies in real life situations and to develop life skills such as team work.

In a similar effort, two years ago CTV North Suburbs partnered with the Roseville Adult Learners Program at the Fairview Community Center to provide video production training for their students, all of whom are immigrants learning English as a second language. There were 12 students the first year, and this past year we had 34. As with the Youth Media Program, the goal is not to train professional videographers, but to support their English language training and to give them the tools to tell their own stories.

The Youth Media Program and the classes for the Roseville Adult Learners Program are also important for helping those who sometimes perceive themselves as outsiders, whether in the high school culture or in the American culture at large, to find a way to fit in and learn to express themselves.

The Staff Report and RFRP laid out a well-reasoned needs assessment for the number and type of PEG channels. The only additional requirement in the RFRP regarding PEG was a move to simulcasting the current SD channels in HD. Considering digital compression technology, the NSCC believed that the Staff Report and RFRP would have essentially not required additional bandwidth but rather used less than the analog bandwidth used by the NSCC/NSAC a year or so ago. Comcast’s proposal would use less than 6 MHz of capacity, far less than the 48 MHz of capacity in the current franchise agreement, according to CBG Communications, Inc.

Past Peformance - Customer Service Issues

The performance review conducted by The Buske Group was done in the Fall of 2011. Had it been done in 2013, it would have told a very different story about Comcast's customer service. Historically, the NSCC office would receive two or three customer complaints per month, but in January 2013 the complaint calls spiked. The staff quickly discerned two primary causes. First, beginning with the January bills and with ineffective notice to subscribers, Comcast began charging $1.99 for the digital transport adaptors (DTA's) that the company had been providing at no charge since it began its transition to a digital cable system in 2010. Second, Comcast's Western Division had implemented a restructuring of its call centers, going from regional call centers that handled the full range of customer issues to call centers that specialized in specific issues, such as billing, installation, retention, Internet service, etc., and the transition did not go well. The result was long wait times to talk to a customer representative, with many calls routed to off-shore contract call centers unprepared for the influx of customer referrals and many of whose staff did not have adequate English language skills.

Although the call center transition should have been resolved by now, the NSCC office still hears from customers, in addition to their primary complaint, about long wait times and the English language skills of the customer service representatives. Generally, by the time customers call the NSCC office, they are extremely angry and frustrated with a customer service system that provides different information everytime they call, that seems more intent on blaming the problem on the customer than accepting responsibility and fixing it, and whose pricing is less than transparent, from DTA fees that include both equipment and "service" to annual service rates that seem to go in $3 to $5 increments. In contrast, the PEG fee about which Comcast complains has gone from $3.75 in the early 2000's to $4.15 in 2014, an increase of only $0.40.

In determining the needs and interests outlined in the Staff Report and the RFRP, the NSCC strongly considered the lack of any subscriber complaints about the PEG fee and the constant rate increases for cable services to substantiate the inclusion of a request for Comcast to voluntarily continue operational support payments that would allow the NSCC to continue to meet the historical and future needs and interests of the communities. The NSCC cannot recommend the adoption of Comcast's proposal regarding its PEG commitments.

NSCC/NSAC Financial Operations

Comcast consultant Andrew Elson of E-Consulting Group has questioned the allocation of the Executive Director's time as reported on the NSAC's IRS Form 990 in 2011 and 2012. The report is prepared by the NSCC/NSAC contract accountants and auditors, Harrington Langer & Associates, and reviewed by staff, who simply missed this error. While an error, it has no place as part of the formal renewal process. The financial statements sent to the IRS reflecting the NSAC as a non-profit organization is not relevant to the financial qualifications of Comcast to hold a franchise in the member cities.

Comcast's proposal also relies on an assertion by Mr. Elson on page 22 of his report that the NSCC and NSAC held $2.1 million in cash and cash equivalents in reserves and demands that half of this "reserve fund" be distributed to the member cities and counted toward the capital grants to the cities proposed by Comcast. Mr. Elson and Comcast apparently fail to recognize that the various NSCC and NSAC checking and money market accounts are not static. While there may have been $2.1 million collectively at one point in time in these accounts, that is not the case at this point in time. Two of the accounts, one for NSCC and one for NSAC, were checking accounts used for daily operations. They will ebb and flow as funds go in and funds are expended. One of the money market accounts is a $250,000 letter of credit required by our lease because of the uncertainties of the franchise renewal process. Another account included in the "reserves" is a deferred revenue account that holds the PEG funds to be used in the next calendar quarter.

In addition, Comcast and Mr. Elson fail to consider the value of having reserves available to cover large capital expenses that are not annual, such as the over $500,000 in capital improvements required when CTV North Suburbs had to move out of its former location and lease space in a new office building, or when it has to replace 10 cameras in two mobile production trucks and five cameras in the studio, or purchase new servers for video and office storage. In short, having financial reserves to cover extraordinary or unexpected expenses is, in fact, a good thing, and it is inappropriate for Comcast to suggest how much those reserves should be and how the funds should be distributed. Those are NSCC and NSAC board decisions. The proposal is for future cable related needs and interests. The use of the current PEG obligations is under the current franchise agreement, and they are not required to be used to offset any future cable related needs and interests. This is a practice that is entirely reasonable and under the control of the Board of Directors.

Recommendation

The NSCC/NSAC recommends that the NSCC Renewal Committee and the NSCC Board recommend to the Member Cities that the Member Cities make a preliminary assessment that the Comcast Franchises should not be renewed based on this supplemental staff report including the additional consultant's reports, because the Comcast proposal does not meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. Further, staff is very concerned that, by adopting the Comcast Proposal, the NSCC and the member cities will be under franchise terms that will unfairly benefit Comcast. Many of the Comcast proposed franchise terms will limit enforcement by the NSCC and the member cities or will reduce the financial penalties for Comcast's failure to comply with the franchise agreements. It is clear to the staff that the proposed I-Net and PEG funding and channels will cause the current operations and the anticipated future cable related needs and interests to be severely hampered by the Comcast proposal. Furthermore, the NSCC currently has issued two Notices of Violation to Comcast on: 1) Rate Order Compliance and the 2) 6 MHz PEG channel capacity. The NSCC will potentially consider additional notices of violation regarding Comcast's compliance with the March 2012 Memorandum of Understanding with regards to the bundled package allocations and adherence to the current franchise provision regarding the cost basis for Comcast's late fees. These compliance issues also serve as a basis for a preliminary assessment that the Comcast Franchises should not be renewed.

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Executive Summary of CBG Communications, Inc.'s

Report on the Technical Aspects of Comcast's Formal Renewal Proposal to the

North Suburban Communications Commission

CBG Communications, Inc.
Thomas Robinson, President
Dick Nielsen, Senior Engineer

May 7, 2014

EXECUTIVE SUMMARY

CBG Communications, Inc. ("CBG"), conducted a system technical review, consulting, and engineering services project evaluating Comcast's residential network, the Institutional Network ("I-Net") and Public, Educational, and Governmental ("PEG") Access signal origination, transport and signal distribution over the cable system and dedicated transmission links serving Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, Saint Anthony and Shoreview, MN ("Member Cities") comprising the North Suburban Communications Commission's ("NSCC") service area. CBG's findings and recommendations are fully described in our Final Report, "Evaluation of Comcast's Subscriber System, Evaluation of the Existing Institutional Network, Evaluation of PEG Access Signal Transport and Distribution" ("Technical Report"), dated July, 2013.

CBG also assisted the NSCC with its preparation of the Staff Report and Request for Renewal Proposal ("RFRP"). In addition to components that CBG was not specifically involved with, these documents included technical elements and functionality specifications required to meet the needs enabled by the subscriber network, the I-Net and PEG Access origination and transport network.

This Report was prepared by CBG at the request of the NSCC. In preparing this Report, CBG has reviewed the technical aspects of the formal Cable Television Franchise Renewal Proposal ("Renewal Proposal") of Comcast of Minnesota ("Comcast") in response to the NSCC's RFRP dated July 29, 2013. Our focus was on Comcast's responses to the RFRP related to system functionality and capacity as it pertains to Cable TV services (including the subscriber network, I-Net and PEG Access transport), system maintenance and overall system performance and the potential need for system upgrades over the course of a 10 year franchise agreement.

Our findings from our review and analysis of Comcast's Renewal Proposal are described in detail in the main body of this Report. Overall, CBG finds:

- Comcast's Renewal Proposal does not comply with a number of the system technical, PEG Access transport and I-Net provisions of the model franchise. In many cases, Comcast does not specifically respond to requirements of the RFRP in its Proposal. Because the requirements of the RFRP were not addressed, no conclusion can be made regarding the adequacy of Comcast's proposal in these areas. Comcast did not respond to many of the recommendations made in CBG's Technical Report, and therefore did not sufficiently respond to the needs determined by the Commission as described in both the Staff Report and the Community Needs Assessment prepared by the Buske Group.

- Some of Comcast's responses echo a unilateral sentiment of "we will decide" without proposing to the Commission what it specifically believes will meet the NSCC's needs. As such, Comcast's proposal is nonresponsive in these areas and is inadequate.

In summary, Comcast's Renewal Proposal, in many respects, is not so much a proposal of what it will do from a technical perspective to meet the needs determined by the Commission, but rather a dictate of what it will not do. Further, where Comcast indicates it will meet some or a portion of the needs, it often will not describe how it proposes to do so. As such, Comcast's Renewal Proposal regarding many technical, I-Net and PEG Access signal transport matters is deficient and not reasonable.

Provision and Use of the Institutional Networks

Comcast has made it clear that it is not proposing to continue the existing fiber optic and HFC I-Net as built and maintained today. Comcast has proposed to continue the HFC I-Net for PEG Access video origination purposes only. Comcast also proposes to keep the existing fiber optic I-Net in place for PEG Access video origination purposes. However, Comcast has proposed that any utilization of the I-Net, outside of video origination, can only occur as a managed service whereby Comcast would charge a monthly recurring charge for use of the network and therefore Comcast would profit from non-video origination use of the I-Net.

During the current franchise, Comcast has enabled the NSCC and the Member Cities to use the I-Net for data transportation, in addition to using the I-Net for PEG Access video origination. Indeed, Comcast has installed equipment owned by Member Cities on the I-Net in order for this data transportation to occur. This arrangement dates back to when cable modem technology was in its infancy in the late 1990s and early 2000s and has continued through the more recent installation of Ethernet based equipment on the fiber optic I-Net.

CBG strongly believes that Comcast should continue to provide the I-Net for uses beyond PEG Access video origination, as well as for such video origination, as detailed in the Buske Report and in CBG's Technical Report. The I-Net has been in place for more than 14 years and has fulfilled data communication needs for the NSCC and its Member Cities for more than 14 years and needs to continue to do so.

CBG's Technical Report clearly states the need for the functionality of the HFC I-Net to continue, and for the HFC I-Net to be able to provide HD PEG Access signal transportation. However, the Report goes on to say that "the current HFC I-Net was upgraded over 12 years ago. However, the amplifiers in use date back to the 1980's. Some of these have been in operation for nearly 30 years. Replacement components are no longer made and it is likely that used replacement parts are difficult - to obtain. Therefore, we recommend that if this HFC I-Net is to be utilized going forward, these amplifiers be replaced, rather than hoping that over the course of a renewed franchise term of 10-15 years, they will continue to operate successfully and replacement parts will be available. CBG recommended that the current HFC I-Net be upgraded or that other forms of signal transportation, that would fulfill the need, be implemented. Comcast in its Proposal, however, merely states that:

> *"Comcast will provide transport of HD PEG programming over fiber where Comcast owned fiber facilities and capacity exist. Comcast will provide transport for SD PEG programming over any platform or facility of Comcast's choosing"[1].*

Comcast also indicates that it has no plans to upgrade either the fiber I-Net or the HFC I-Net. These statements then do not address the technical needs identified and should be seen as an insufficient response.

Use of The Institutional Networks is Non-Commercial

Comcast indicated in its Proposal that the I-Net is currently used for commercial purposes. Comcast asserts that the City of Roseville sells I-Net services to other entities in a commercial agreement with those entities. This is simply not true. The City of Roseville works with other cities throughout the Twin Cities area in a cost sharing scenario. The agreement between these cities is for shared equipment and applications and does not include selling access to the I-Net or I-Net services. The Comcast I-Net is used at the discretion of each of the cities to interconnect the city with the shared applications provided by the Metro I-Net. This allows sharing of manpower, applications and equipment such as centralized servers. This also allows access to applications by larger cities at reduced costs and it allows for smaller cities to have access to applications that would not otherwise be cost effective for them.

[1] Comcast Renewal Proposal, page 59

Interconnection – PRISMA

Another technology based need that is supported in the Buske Report and CBG's Technical Report is that of interconnection with entities outside of the NSCC service area. Such interconnectivity exists today via a network labeled as the PRISMA network. This network provides interconnection of video services for entities outside of the NSCC service area to receive video programs from CTV and it allows CTV to use video from outside the NSCC service area. It also provides interconnection with other I-Nets for voice and data communications purposes and sharing between government and educational entities. Comcast, in its Proposal, has agreed with CBG that the current PRISMA Interconnect is in need of an upgrade. Comcast proposes to use its Converged Regional Area Network ("CRAN") to replace the PRISMA equipment.

However, Comcast only says it will replace the existing equipment at its headend and hubs and does not specify that CTV, the NSCC or member Cities can use it at no cost for all purposes. The Proposal states that

> *"But additional add/drop locations in the future will be billed (or credited) at $1,675.80/month/location"*[2].

There is no mention of an initial connection to the Interconnect and it is unclear as to whether the Interconnect can be used for data or only PEG Access video sharing with other entities.

QSI Report – I-Net Valuation

Comcast, in an effort to value the I-Net and to create a basis for charging the NSCC and its Member Cities for I-Net utilization, obtained a report from QSI Consulting, Inc. ("QSI") that places a value on the I-Net as it exists today. The QSI Report makes several incorrect assumptions as its basis for valuing the I-Net. First, QSI's Report uses examples from the Twin Cities and other locations throughout the Country to compare this I-Net to other largely commercial networks. Comparisons to commercial networks are inapplicable to the NSCC I-Net. The use of the NSCC I-Net is noncommercial and was built and maintained as a public benefit.

The second flaw in the QSI Report is that they include the cost to build other networks as a basis for what this network is worth. They assume that a monthly recurring cost to the users of the I-Net would need to include the recovery of construction costs.

[2] Comcast Renewal Proposal, page 83

Because the I-Net has been in place for at least 14 years and because Comcast and its predecessors recovered the cost to build the I-Net from its subscribers over the years, this cost should not be included in a costing model of the I-Net.

Therefore, the only cost, if anything, to the NSCC And Member Cities for utilization of the I-Net should be the cost of maintaining the I-Net over and above costs that would be incurred by Comcast to maintain their subscriber system.

System Inspection / Documentation and Repairs

CBG's technical Report documented a number of issues of non-compliance with the National Electrical Code (NEC) and the National Electrical Safety Code (NESC) on Comcast's cable TV system up to and including on buildings and homes in the NSCC area. CBG then recommended that the NSCC require Comcast to regularly inspect and document issues found on its cable TV system. In addition, the Report recommended that requirements for such inspections and documentation be included in any renewed franchise. This was embodied in the Staff Report that Comcast "provide a detailed inspection and repair plan that addresses these and all issues and code violations in the NSCC service area". Comcast provided a significant amount of discussion on its repair procedures in place today but it never specifically described an inspection and documentation plan.

System Upgrade Review

CBG's Technical Report stated that there may be a need to upgrade the system in the future to meet the cable related needs of the communities served by the NSCC. The report recommended that there be a mid-term review of the system in part to evaluate the ability of the system to meet the cable related needs of the community. In Comcast's Proposal, Comcast only states:

> "*Comcast does not propose any rebuilds or upgrades to the current system at this time, and does not propose new upgrades to the current institutional network.*[3]"

This makes it impossible to evaluate Comcast's system's ability to meet the needs of the community going into the future and the likelihood that Comcast will upgrade the system as needed. This becomes important as Comcast may continue to use more of its system's capacity for non-cable TV services diminishing the ability of the cable TV

[3] Comcast Renewal Proposal, page 57

system from delivering the cable TV needs of the subscribers including the PEG programming.

EXECUTIVE SUMMARY

REVIEW OF PUBLIC, EDUCATIONAL, AND GOVERNMENT (PEG) ACCESS ASPECTS OF FRANCHISE RENEWAL PROPOSAL SUBMITTED BY COMCAST OF MINNESOTA

Prepared for

The North Suburban Communication Commission

May 7, 2014

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EXECUTIVE SUMMARY
REVIEW OF PUBLIC, EDUCATIONAL, AND GOVERNMENT (PEG) ACCESS ASPECTS OF FRANCHISE RENEWAL PROPOSAL SUBMITTED BY COMCAST OF MINNESOTA

I. INTRODUCTION/OVERVIEW

The North Suburban Communication Commission ("NSCC"), on behalf of its member cities 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" or individually a "Member City") in July, 2013, issued a Request for Renewal Proposal ("RFRP") to Comcast of Minnesota ("Comcast"). This report is a review of the public, educational, and government ("PEG") aspects of the proposal submitted by Comcast in response to the RFRP.

Prior to issuing its RFRP, the NSCC, acting through its staff and retained experts on institutional networks and PEG access, undertook extensive research to identify the current and future community cable-related needs and interests of the NSCC member cities, their residents, business and community organizations, and educational institutions that serve the residents of the cities. The Buske Group ("TBG") was retained to prepare a Community Needs Ascertainment by the NSCC, which review was included in the Staff Report and became part of the RFRP.

The NSCC, through its RFRP, sought a proposal that: (1) describes, in detail, what Comcast proposed to provide during a franchise term with respect to services, facilities and equipment; (2) demonstrates that Comcast satisfies community cable-related needs and interests and in a manner that will provide the benefits of cable communications technology to the residents, institutions, organizations, and businesses in the community, now and for any franchise term; (3) shows that Comcast is financially and otherwise qualified to hold a renewal cable franchise and to provide the services, equipment and facilities set forth in its proposal; (4) explains why Comcast believes that renewal is warranted in light of its past performance; and (5) complies with the requirements of Chapter 238 of Minnesota Statutes.

The format of this Executive Summary mirrors the format of the full report. Part II of this document is a review of key PEG elements of the proposal submitted by Comcast. This analysis does not attempt to analyze each and every PEG requirement in the RFRP, and whether Comcast has or has not complied with that requirement of the RFRP. This summary analysis concentrates on the key categories of PEG requirements and outlines Comcast's level of compliance.

Part III of this Executive Summary summarizes the flaws in Comcast's critique of the Community Needs Ascertainment activities undertaken by NSCC and points out serious flaws in Comcast's own needs ascertainment methodology.

II. KEY PEG ACCESS ELEMENTS OF COMCAST'S PROPOSAL

This section summarizes the degree to which Comcast has complied with the primary categories of PEG access requirements contained in the RFRP.

Comcast has failed to comply with many of the PEG access and public service obligations contained in the RFRP. If implemented in accordance with Comcast's proposal, there will be a dramatic reduction of services and channels to the public, since many of the requirements, needs and interests identified in the Community Needs Ascertainment and RFRP are continuations of current funding and services being provided by Comcast, pursuant to the current franchise agreement and related settlements and other agreements with NSCC. Obviously, there are changes and upgrades identified in the RFRP requirements that would be logical, given the dramatic changes in technology and the public's use of video and media services since the current franchises were granted in 1999.

The Proposal submitted by Comcast is inadequate to meet the identified current and future community cable-related needs and interests of NSCC, its ten Member Cities, NSAC, the three public school districts that serve the residents of the Member Cities, community groups and organizations that provide community-related services, area businesses, and the residents of the Member Cities.

The series of tables on the following pages of this Executive Summary list key RFRP requirements and the degree to which the proposal submitted by Comcast complies with those requirements.

KEY PEG ACCESS TERMS	NSCC/CITIES RFRP REQUIREMENT	COMCAST FORMAL PROPOSAL
Public, Educational, and Government (PEG) Channels	Maintain 8 existing SD Channels (p.31,39 ,etc.)	Noncompliant: 3 SD channels available immediately (p. 71); trigger for a 4th SD channel; "*In no event will the total number of PEG channels exceed five regardless of the format in which they are delivered*." (p. 74)
	Add 4 HD Channels (p.31, 39 ,etc.)	Noncompliant: Only 1 HD channel with 3 months notice with trigger of 5 hours/5 days per week HD original programming is available. (p. 71)
	Availability of additional HD and/or SD PEG channels (p.31, 39,etc.)	Only 1 additional SD PEG channel if NSCC documents that it meets MN Statute requirements; Applicant will have 3-6 months to provide this channel. (p. 74)
PEG Signal Quality and Functionality	Qualitative equivalence for PEG channels to highest quality local broadcast channel(s), including (but not limited to) HD. (p.32, 37, etc.)	Noncompliant: PEG channels will be provided an acceptable signal consistent with FCC standards. No specific commitment to qualitative equivalence. (p. 71-72, etc.)
	Simulcast SD and HD PEG channels as long as SD channels are available (p.32, 37, etc.)	Noncompliant: Not addressed and not offered.
	Permit on demand viewing of SD and HD PEG access programming and PEG data via the Applicant's on-demand platform. (p.34)	Noncompliant: No PEG VOD.
	Sufficient capacity for PEG channels to utilize new technologies such as 4K or 3D (p.31, 37, etc.)	Noncompliant: No offer of 4K or 3D or access to new technologies.
	PEG capacity to enable the transmission of closed captions, video descriptions, SAP content and multiple audio channels/streams. (p.32, 33, etc.)	Noncompliant: No offer of these services or capabilities on PEG channels.
	Interactive capability and VOD for PEG; server storage for free on-demand viewing of PEG (p.33, 34, etc.)	Noncompliant: Comcast does not propose interactive or video-on-demand capability for PEG channels.
	Ability to narrowcast government content to different cities on single channel (currently occurs on Channel 16) (p.39)	Noncompliant: Not addressed in proposal.

KEY PEG ACCESS TERMS	NSCC/CITIES RFRP REQUIREMENT	COMCAST FORMAL PROPOSAL
PEG Channel Locations	PEG SD channels on basic tier. (p.32) PEG HD channels on lowest cost HD tier. (p.32) Grouped PEG channels – SD channels on lowest cost SD tier and HD channels grouped on lowest cost HD tier (p.32) Changes in channel numbers may only occur to comply with federal law, and must have prior approval of NSCC. In the event of changes, all costs must be borne by Applicant. (p.32-33)	All PEG channels on basic-tier of service. (p. 71-72) <u>Noncompliant</u>: No indication as to whether PEG HD channels will be on the lowest cost HD tier. <u>Noncompliant</u>. PEG channels will remain in reasonable proximity to one another (p. 72; also addressed on p. 73-4). No differentiation of SD or HD channels. <u>Noncompliant</u>: Channel numbers generally anticipated to be consistent with current PEG channel numbers (p.71). No guarantee of permanent assignment of PEG channels. Will reimburse up to $1,500 for costs and provide assistance with notifications to customers for channel number changes. (P. 72)
PEG Channel Program Listings & Information in Guides	Full PEG Channel listings on Interactive Program Guide. (p.38, 42, etc.) No charge to entities managing PEG channels. (p.38, 42, etc.)	<u>Compliant:</u> PEG Channels on Interactive Program Guide. Narrowcasting to a multiple communities on the same channel is not possible. <u>Noncompliant</u>: NSAC must pay for charges to get program on IPG.
PEG Signal Transport and Linkage of PEG Access Origination Locations, PEG Access Facilities and the Headend	Provide capacity on I-Net (& associated equipment) for video signal transport from various locations in NSCC member cities, Ramsey County, NSAC at no cost. (p.35, 42, etc.) Bi-directional HD/SD feed (& associated equipment) between Comcast headend NSAC master control. (p.35, 36, etc.)	<u>Noncompliant</u>. Comcast agrees to provide portion of I-Net currently used for PEG purpose (estimated at 8%). Comcast to charge its estimated value of that against its proposed capital contribution. No offer of any funding for equipment for video signal transport other than funds included in its proposed capital contribution. Comcast proposes no upgrades to the I-Net capabilities for PEG purposes. Comcast proposes to "*provide transport of HD PEG programming over fiber where Comcast owned fiber facilities and capacity exist. Comcast will provide transport for SD PEG programming over any platform or facility of Comcast's choosing*." …"*To the extent the NSCC requires PEG-related capital equipment upgrades to enable HD PEG-signal transport, or additional network capacity, the NSCC can seek funding for such upgrades and network capacity from the member cities utilizing the PEG capital funding that Comcast is committing to provide directly to the member cities*."(P. 59) (See CBG Report for details.)

KEY PEG ACCESS TERMS	NSCC/CITIES RFRP REQUIREMENT	COMCAST FORMAL PROPOSAL
PEG Access Channel and Community Media Center Designated Access Providers	NSCC reserves right to designate entity(s) to manage PEG access channels and facilities. (p. 34, etc.)	Compliant: Comcast agrees to cooperate with PEG channel manager(s) designated by NSCC.
PEG Capital Funding	Total PEG capital funding for 10 municipalities and NSCC/NSAC over franchise term: $14,160,740. This amount is to be allocated over the life of franchise per the RFRP. (p.65, 67, etc.) PEG support to be provided to NSCC and NSCC distributes equipment and/or funding to each member city. (p.65, 67, etc.)	Noncompliant: Total amount in proposal $3,247,830. Comcast only proposes to provide a portion of costs for equipment needed in Council Chambers/control rooms for municipalities over the life of the franchise, and NO support for public and educational access equipment needs as those needs are met by NSCC/NSAC. (p. 71-72, etc.) Noncompliant: Comcast proposes to provide funding to each City and no funding directly to NSCC. (p. 79)
PEG Services Grants	Annual operating grants requested for 10 municipalities and NSCC/ NSAC over franchise term estimated to be $13,558,130. Comcast's current franchise agreement/ordinances (as amended) and various MOUs and agreements include PEG support other than capital grants and funding. (p. 38)	Noncompliant: Comcast offered no funding or support for the use of the PEG facilities above franchise fees.(p. 76) Comcast's position is that anything they would propose other than capital funding must be a part of the 5% franchise fees
Complimentary Cable Drops & Services	Free cable drop, outlet, cable service, and all terminal equipment necessary to receive *all* subscriber service tiers for NSCC/NSAC offices, studio facility, each Member City and Ramsey County government bldg. (including but not limited to police, sheriff &fire stations), public schools, public library (including multiple connections for multiple locations belonging to a given department or agency).(p. 70-71,etc.)	Noncompliant: "*Comcast will provide complimentary basic cable service via one drop to one outlet at each of the educational and municipal locations listed in Attachment A. Comcast will provide three complimentary digital devices at each such location if necessary to view the basic cable service. Service to additional outlets at each location may be purchased by the City*." (CPFA p. 10-11, Section 7.8) Comcast indicates it will not provide free HD equipment to customers, including complimentary municipal and educational accounts (Section 7.4 [iv]).

III. <u>RESPONSE TO COMCAST'S CRITIQUE OF COMMUNITY NEEDS ASCERTAINMENT</u>

Comcast's critique of the Community Needs Ascertainment report criticizes the methods undertaken by TBG to gather public input. TBG conducted a telephone survey, five focus groups, a survey of the focus group participants, an on-line survey of area residents, and small group interviews with I-Net and PEG access stakeholders. These activities provided opportunities for all residents of the NSCC franchise area, people who work but do not reside in the area, and individuals with first-hand knowledge of and experience with the I-Net and PEG access resources to offer their input regarding a number of cable-related matters. This expansive approach to public input is essential in that the Cable Act points out that the franchise renewal process should "*afford the public in the franchise area notice and participation*."

Comcast also criticizes the conclusions regarding existing PEG Access and Institutional Network resources that were based upon the consultant's: (1) on-site inspections of the PEG access facilities; (2) examination of detailed inventory and operations documents; (3) discussions with and input from PEG access and I-Net staff and/or stakeholders; and (4) decades of experience in this field.

Comcast's consultant, Talmey-Drake Research and Strategy, Inc., prepared a critique of TBG's research and conducted a telephone survey that it argues is superior to the telephone survey conducted by Group W Communications on behalf of NSCC. *It is important to note that Talmey-Drake's telephone survey of <u>cable subscribers</u> was the only reported activity undertaken by Comcast to ascertain the cable-related needs and interests of the public in the NSCC franchise area*.

Unlike Comcast's limited effort to obtain public input, the TBG community needs ascertainment activities sought and obtained input from elected officials and other representatives of the Member Cities' local governments; teachers and other individuals associated with educational institutions in the franchise area; representatives of nonprofit, civic and community organizations; leaders of health and human service organizations and agencies; members of area arts, cultural, and heritage organizations; local business leaders; PEG access and I-Net staff and/or stakeholders; current Comcast subscribers; and residents who are currently not (or have never been) Comcast cable subscribers.

Talmey-Drake's critique relies heavily on advocacy-oriented value judgments, unsubstantiated assumptions, double standards, and frequent hyperbole. In addition, some elements of the Group W telephone survey that were severely criticized by Talmey-Drake appear in very similar form in the telephone survey conducted by Talmey-Drake.

1. Talmey Drake claims that the Group W survey is "*fatally flawed*" because "*the sample did not include cell-phone-only respondents*". Group W complied with the federal law that prohibits use of automatic dialing systems to contact a cell phone number without prior consent. Survey research professionals have also raised many other concerns about the use of cell numbers in their work. Given

budget, legal and other real world considerations, it was appropriate for Group W to conduct the survey as it did.

2. Talmey-Drake implies that the Group W survey report did not include what it believes is sufficient methodological detail, and states that this negates "*the trustworthiness of the survey and the professionalism of the expert who is presenting the results of the survey*." This criticism is not supported by standard industry practice.

3. Talmey-Drake added in respondents who were not asked a particular question to minimize survey results that show support for community access services and programming. It is inappropriate and misleading to calculate a result that includes people who were not asked a question and call it the "total sample response."

4. One example of the double standards employed by Talmey-Drake: A Group W survey finding that <u>72.5</u>% of respondents said it was "Very Important" or "Important" to have local cable programming is belittled by Talmey-Drake as "*not particularly high*." But it states that its survey finding that <u>69</u>% of customers say they are very or somewhat satisfied with cable service shows that customer satisfaction is "*solid*."

5. Talmey-Drake's critique contains several statements that involve unfounded assumptions, including:

   a. Talmey-Drake states that if CTV programs were rated using the same methods as commercial channels, "*their ratings would barely be infinitesimal.*" It is impossible to know what the ratings of the CTV programs would be under that scenario, since national ratings firms like The Nielsen Company have never included community access channels in their ratings.

   b. Talmey-Drake states that if a respondent says he is very interested in watching local sports, "*he may well be imagining a production level on par with NFL games, but when he actually sees a televised local game it is anything but NFL quality play or production and he loses interest."* Talmey-Drake simply assumes that CTV's award-winning local sports productions are poorly produced, an inappropriate assumption that is easily refuted.

6. Talmey-Drake says the Group W survey is "flawed" because, unlike Talmey-Drake's survey, quotas were not enforced to select respondents based upon their gender, level of cable service, and geographic location. One could ask, why not also enforce requirements for age, income and ethnic distribution? At what point of "enforcing" requirements does a random sample cease to be random?

7. Rather than asking about the importance of the CTV channels directly (as the Group W survey did), Talmey-Drake simply assumes that weekly viewing amounts are a valid "*indication of the importance of community access channels*." Weekly viewing amounts have no substantiated relationship to the perceived "importance" of community access channels. These reported weekly viewing amounts could be related (for example) to the fact that unlike the other

channels on the Comcast line-up, Comcast's on-screen program guide includes no information about upcoming programs on the CTV channels.

8. Drawing upon Talmey-Drake's misleading interpretation of its survey results, Comcast proposes to significantly reduce the number of PEG access channels in the NSCC franchise area (saying that this "*strengthens*" them). Actually, a 44% plurality of Talmey-Drake survey respondents said that Comcast should keep the current number of community access channels (another 3% said to <u>add more</u>) -- as compared to only 26% who said to cut them back at all. Only 12.9% of the Talmey-Drake survey respondents supported a reduction in the number of community access channels as proposed by Comcast.[1]

9. Talmey-Drake repeatedly asserts that responses to its survey questions show that cable subscribers are not inclined to support local programming financially. However, Talmey-Drake's questions imply (or state outright) that customers must pay <u>all</u> of Comcast's PEG access-related costs, since that is allowed by federal law. It should be noted that just because the federal law <u>allows</u> one to do something, this does <u>not</u> mean that it <u>must</u> be done.

10. Talmey-Drake carefully words its description of various types of programming services, as it attempts to "measure" the importance of receiving these services in high-definition (HD). A purposely-vague and boring definition of community access programming is included, stating only one example: "*meetings.*" The responses lead Talmey-Drake to conclude that having the community access channels offered in HD is the "least important." A follow-up question regarding the acceptable amount to pay for these channels in HD is also very misleading, since it implies that HD channels are purchased on a per-channel basis.

11. Finally, Talmey-Drake includes similarly biased questions about having community access programming available On Demand, weighing down this option with this loaded wording: "***your local government may require the cable company*** *to set aside additional capacity so that you can also watch past meetings of your local city government….*" The bias is compounded with a statement that "*Making past city council meetings available On Demand will mean fewer channels will be available for watching other types of regular, non-access cable programming or movies On Demand….*" This is simply not true.

The Talmey-Drake critique also dismisses the legitimacy of the contributions from those who participated in the other community needs ascertainment activities that TBG conducted (five focus groups, an on-line survey of area residents, and small group interviews with PEG access and I-Net stakeholders). A variety of methods were used to invite the public to participate in these activities, including notices on websites, emails to residents and stakeholders, press releases to area media outlets, flyers posted at locations throughout the franchise area, and newspaper advertisements. Talmey-Drake complained

[1] Talmey-Drake only asked a question about the desired number of *community access channels*, willfully deciding not to ask a question about the desired number of channels dedicated to any other type of programming (e.g., *sports programming*, which currently occupies <u>44</u> channels on Comcast's line-up).

that some participants were not cable subscribers, a small number of participants worked in but do not reside in the NSCC franchise area, random sampling was not used to restrict participation, and the views of the I-Net and PEG access stakeholders were tainted by the fact that they "*appear to have a vested interest in I-Net and PEG access.*"

In response, we note that: (1) non-subscribers in the area have a right to participate in a process that considers the community obligations of a private commercial firm to use public rights of way; (2) people who do not reside in the area but work there may have work-related reasons to use the I-Net and PEG Access resources, and therefore can provide meaningful feedback; and (3) the direct experience of I-Net and PEG access stakeholders can result in valuable comments and suggestions, based upon their actual use of these resources. Using the logic associated with Talmey-Drake's criticism of these participants, one could conclude that opinions and proposals of Comcast representatives regarding franchise renewal elements should also not be considered as legitimate, due to the "*vested interest*" of Comcast in negotiating an agreement that is compatible with Comcast's desired outcomes.

Again, it is important to point out that the Cable Act invites franchising authorities to establish a franchise renewal process "***which affords the public in the franchise area*** *appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term"* (emphasis added).

It should also be noted that the language of the Cable Act does <u>not</u>: (1) dictate the nature and suitability of the public input activities to be undertaken; (2) restrict participation in the public input process to cable subscribers (note that the Cable Act states "*…affords the* <u>*public*</u> *in the franchise area…*"); or (3) require every aspect of the public input process to be conducted in accordance with strict adherence to survey research methodology.

Front Range Consulting, Inc.

Executive Summary
FRC's Review of Comcast's Formal Renewal Proposal

By Richard D. Treich

May 2014

Executive Summary

Front Range Consulting, Inc. ("FRC") was retained by Bradley & Guzzetta, LLC ("B&G")[1] to review the Comcast of Minnesota, Inc.'s ("Comcast") response to the Request for Renewal Proposal ("RFRP") issued by the North Suburban Communications Commission and for FRC to identify any issues and concerns it has with the Comcast proposal. The North Suburban Communications Commission (the "NSCC" or the "Commission") is a municipal joint powers consortium organized by Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview, Minnesota (individually, a "Member City" and, collectively, the "Member Cities") pursuant to Minn. Stat. § 471.59, as amended, to administer and enforce cable franchises awarded by the Member Cities. Comcast responded to the RFRP on December 20, 2013 ("Proposal") with a lengthy submission and numerous exhibits.

Review Methodology

FRC has reviewed the Proposal by determining the extent to which Comcast as met the needs and interests contained in the RPRF and associated exhibits primarily from a financial viewpoint. The relevant provisions of the Communications Act (47 U.S.C. 546) states:

> (c)(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b), the franchising authority shall provide prompt public notice of such proposal and, during the 4- month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b), renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether--
>
> > (A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
> >
> > (B) 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;
> >
> > (C) the operator has the financial, legal, and technical ability

[1] Bradley & Guzzetta, LLC has recently changed its name to Bradley Hagen & Gullikson, LLC.

toprovide the services, facilities, and equipment as set forth in the operator'sproposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost ofmeeting such needs and interests.

FRC primarily focused on subsection (D) above where the proposal needs to be evaluated "taking into account the cost of meeting such needs and interests." The legislative history provides further insights to this "cost" standard where it states "[i]n assessing the costs, the cable operator's ability to earn a fair rate of return on its investment and the impact of such costs on subscriber rates are important considerations."[2] The RFRP contained numerous requirements to address the costs of the identified needs and interest with respect to the financial impact on Comcast and the impact on subscriber rates.[3]

Issues Identification

FRC has identified five issues with the Proposal. Those issues are:

- Complete lack of any financial projections to compare the RFRP requirements to the potential earnings by Comcast and the impact on subscriber rates in the NSCC franchise area.
- Lack of any recognition and financial credit that the current I-Net construction costs have been fully and completely paid for by NSCC subscribers.
- Lack of any recognition that Comcast has improperly recaptured valuable analog spectrum from the NSCC and will be able to use that recaptured spectrum for its own money-making purposes without compensation to the NSCC and the subscribers.
- Comcast has proposed that the NSAC be required to use its reasonable reserves accumulated by the NSAC to cover future NSAC operating and capital requirements that will place the NSAC in an exposed financial position which could potentially lead to a financial collapse of the NSAC.
- Comcast repeatedly complains that operating support cannot be required by the NSCC/NSAC but fails to acknowledge that the Cable Act allows the cable operator to voluntarily offer operating support. Given the public support for the NSAC's programming, Comcast should have volunteered to pay operating support to the NSAC as part of its proposal. In a recent development, Comcast has agreed to extend a

[2] *See* H.R. REP. NO. 98-934, at 74 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 4655, 4656.
[3] *See e.g.,* RFRP Form III.F.

current franchise agreement for a minimum of two years while informal negotiations are taking place. The extension continues a capital and operating support PEG commitment that is greater than the current NSCC PEG agreement and drastically larger than Comcast's proposal.

FRC will summarize each of these five issues below.

Financial Projections

Form III attached to the RFRP contained a listing of the financial information and projections that were required as part of Comcast's Proposal. Form III.F contained requirements for *pro forma* financial projections by Comcast. The specific requirements[4] are:

> The Applicant shall furnish tables following the format below and provide the requested *pro forma* projections for the Applicant's operations in the Member Cities for the proposed franchise term (see Form XI), assuming a franchise for the City is awarded on January 1, 2014.[5] If the system's assumed revenues or expenses will reflect an allocation of assumed expenses or revenues for some other entity (including, but not limited to, overhead allocations and management fees), *pro forma* projections for such other entity should be provided as well. The *pro forma* projections should include approximately the same line-item level of detail indicated on the attached forms, but particular details of presentation may differ if the Applicant believes that alternatives are more appropriate given its internal accounting practices. Key assumptions supporting the projections should be documented and submitted as notes to the *pro formas*. In particular, assumptions regarding system modifications, PEG and institutional network requirements, franchise fee expenses, and any other franchise requirements should be clearly identified and treatment of associated costs or revenues in the financial projections should be highlighted or explained.
>
> Financial *pro formas* must be based upon RFRP requirements. If the application deviates from those requirements, submit separate and additional *pro formas* showing the financial impact of each difference.

Comcast response[6] was:

> As shown by the NSCC staff's own report and the public filings of Comcast's corporate parent, Comcast's financial capability to perform is not in question. Comcast objects to the demands in this section for that reason, and also because the questions below are

[4] RFRP Form III, page 101.
[5] The NSCC recognizes that all franchises for the Member Cities will not be awarded on January 1, 2014. This date has been selected for purposes of convenient analysis.
[6] *Proposal*, page 47.

> burdensome, and unnecessary to evaluate Comcast's overall financial capabilities. Moreover, due to rapid and ongoing changes in technology and the cable industry, Comcast would be otherwise unable to make reliable pro forma financial projections for the life of a 10-year franchise. Nevertheless, to try to accommodate this request, Comcast has supplied a 3–year history as Exhibit 13 and subscriber information as Exhibit 16.

Further, with regards to the financial projections of each year of the proposed term of the franchise, they simply referred to this response above. As such there is no data provided by Comcast that will allow any measurement of impact of meeting the future cable related needs and interests.

Also Form III.D asked Comcast for information about its financial goals including historical rate of return on investment. Comcast's response[7] was:

> Overall financial goals for the member cities' systems are to provide a reasonable return on existing and newly invested capital, commensurate with the anticipated risks of the business and the required returns of the capital markets. Since business and market risks change over time with the economy and as competition and technology rapidly increase, Comcast has not established a stated rate of return for the system.
>
> Actual financial returns will always be dependent upon satisfying customers with an array of service offerings delivered in an economically efficient manner. Financial returns do and will vary across cable systems as a result of competition, market characteristics, regulation, and system efficiencies.

Without the required historical and *pro forma* financial data include data on subscriber rates and Comcast's financial goals like return on investment, Comcast has not presented any evidence that would suggest that the RFRP requirement would be overly burdensome on subscribers and would not meet Comcast's financial goals. Quite to contrary, Comcast avoids addressing the fact that PEG obligations are subscriber pass-throughs and will have no impact on the financial results of Comcast. Based on FRC's analysis of subscriber rates in the NSCC franchise areas, PEG fees historically assessed to subscribers have risen at a much smaller rate of increase than has the cable rates under Comcast's control.

FRC has noted that the Proposal has improperly attempted to use the FRC *Financial Analysis of Comcast Corporation*[8] as some sort of endorsement of Comcast financial capability to operate the cable system. The financial report was not meant to assess the financial capability of Comcast but was, as shown in the report, an attempt to ascertain the level of profitability that Comcast generates in the franchise area. With the level of profitability estimated, Comcast

[7] *Proposal* at 45.
[8] *See* Attachment D to the RFRP.

could easily invest these profits in the NSCC franchise area by providing the level of capital and operating support contained in the RFRP and/or reducing the pass-through burden on the subscribers and still return significant profits to the corporation.

I-Net Facilities

Comcast has rejected the RFRP requirement to basically maintain the current HFC and fiber I-Net and has instead suggested that the I-Net would only be maintained for only PEG transport and that the balance of the use of the I-Net will be based on "fair-market value."[9] As an initial matter, Comcast is incorrect that the Cable Act limits the use of an I-Net to only PEG transport.

Again referring to the legislative history of the 1984 Cable Act, it is clear the Congress intended PEG requirements to be separate and distinct from I-Net requirements. The legislative history concludes:

> A franchising authority, under 611(b), may require as part of its request for proposals the number of channels that an operator must set aside for public, education or governmental use.
>
> Subsection 611(b) also permits franchising authorities to require that channel capacity on institutional networks be designated for educational or governmental use. The term "institutional network" means a communication network which is constructed or operated by the cable operator and which is generally available only to non-residential subscribers.[10]

FRC believes it is clear that PEG needs are separate from I-Net needs based on this legislative history and therefore should reject Comcast unsupported position. Comcast I-Net proposal unfairly restricts the needs of the franchising authority. Comcast also fails to consider that the full construction costs (as determined by the cable operator) of these I-Net facilities have been fully recovered from subscribers as part of the PEG fee included in Comcast's regulated service rate. For Comcast to now re-take these paid for I-Net facilities and subsequently charge the NSCC/NSAC for these services at market based rates will allow Comcast to earn a profit on these fully paid for I-Net facilities. Such a self-serving proposal does not meet the needs and interests of the subscribers in the NSCC franchise area.

[9] *Proposal* at 10.
[10] *See* H.R. REP. NO. 98-934, at 46 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 4655, 4656.

Analog Spectrum

The current franchise agreement with Comcast allows the NSCC to use/program eight (8) analog channels on the basic tier.[11] When Comcast converted all of the analog channels to a digital format last year, Comcast was able to re-capture a significant amount of bandwidth on the system. According to the 2014 FCC Form 1240 filed with the NSCC, the Basic service tier contains thirty-two (32) channels. If you assume conservatively that six (6) digital channels can be place in the space of one analog channel, Comcast was able to recapture approximately twenty-six (26) analog channels with this digital conversion. This allows Comcast to reprogram these re-captured twenty-six channels and with an assumed six digital channels for each analog channel re-captured, Comcast would be able to add one hundred and fifty-six (156) new digital services. The programming value of those new channels is quite significant. Additionally, Comcast might be able to use this re-captured analog spectrum to provide faster internet speeds by bonding channels together and/or offer new services like home security services.

Additionally and more importantly, the re-captured analog spectrum assigned to the eight (8) PEG channels has potentially violated the current franchise agreements in the franchise area. Assuming a reasonable valuation technique, FRC has estimated that the value of these lost analog PEG channels has a value to Comcast of approximately $1,250,000 annually. Comcast in its proposal has not considered the lost value of these re-captured analog PEG channels. Without this consideration, Comcast will be unfairly able to enrich its profits from the current system by not compensating the NSCC for this franchise violation.

Operating Reserves

Comcast has proposed that the NSCC/NSAC use some of its current reserves to offset capital and operating costs on a going forward basis. The E-Consulting Group Report (ECG)[12] completely mischaracterizes the reserves held by the NSCC and NSAC. ECG improperly lumps the NSCC and NSAC's reserves together. The NSCC's reserves are generated solely by operating reserves funded by the franchise fees provided by the member cities, not any reserves generated from PEG funding and therefore should not be used to fund NSAC needs. From the $2.1 million discussed in the ECG Report, over $400,000 pertains to the NSCC, leaving a balance of over $1.7 million for the NSAC.[13] Again improperly suggesting, ECG would have the NSAC use these reserves to fund future capital purchases without recognizing that approximately $100,000 of that so called NSAC reserve in the NSAC's checking account used to pay it monthly bills which should not be depleted under any reasonable theory. Also included in the so called reserves is a required deposit that the NSAC must maintain in the bank as part of its lease letter

[11] The current franchise agreements actually call for 12 channels but the NSCC has returned 4 of those channels back to Comcast already.
[12] Exhibit 2 to the *Proposa*l.
[13] Included in this $1.7 million reserve amount is over $400,000 of deferred revenues which cannot be considered a "reserve."

of credit requirement. Finally, it would be financially imprudent for the NSAC to not maintain approximately a six month reserve of it annual budget as set forth in non-profit guidelines. The ECG "recommendation" completely misunderstands the financial reserves that the NSAC has prudently incurred during this franchise term and using any of these funds would be detrimental to the NSAC on a going forward basis to purchase future expenditures.

The result of this ill-advised recommendation by ECG to use these reserves for future expenditures would place the NSAC in an exposed financial position that could lead to the collapse if the NSAC unless that is the end result the Proposal is attempting to suggest. These reserves have been prudently incurred under the expiring franchise and memoranda of understanding and should not be used to offset future capital and operating support obligation. Most importantly, these funds are not Comcast funds but rather funds provided by subscribers and to be prudently used by the NSAC.

Operating Support Payments

From the very onset of the Proposal, it suggests that operational support contributions are unlawful.[14] The FCC has made it very clear in 1999 that a cable operator is free to make voluntary operating payments as part of a franchise agreement. In the letter ruling issued on June 25, 1999, the FCC added the following modification and clarification:

> The legislative history explains that "Subsection 622(g)(2)(C) establishes a specific provision for PEG access in new franchises. In general, this section defines as a franchise fee only monetary payments made by the cable operator, and does not include as a "fee" any franchise requirements for the provision of services, facilities or equipment. As regards PEG access in new franchises, payment for capital costs required by the franchise to be made by the cable operator are not defined as fees under the provision. These requirements may be established by the franchising authority under Section 611(b) or Section 624(b)(1). In addition, any payments which a cable operator makes **voluntarily** relating to support of public, educational and governmental access and which are not required by the franchise would not be subject to the 5 percent franchise fee cap." *See* H.R. Rep. No. 98-934 at 65 (1984) reprinted in 1984 U.S.C.C.A.N. 4702; *see also* 1984 U.S.C.C.A.N. at 4753 (Colloquy between Rep. Wirth and Rep. Bliley). (Emphasis added).

Based on the well documented needs and interests in the franchise area, the Proposal should have agreed to provide, at a minimum a voluntary payment, for the operational needs and interests identified in order to allow the NSCC to continue to provide the services that were confirmed by the Ascertainment Report.

[14] *See e.g., Proposal* at 1.

Recently Comcast has agreed to resolve the same 6 MHz issue discussed above with the Ramsey Washington cable commission by agreeing to provide an HD PEG channel now and has agreed to continue the same capital and operating support payments for approximately two years while the commission negotiates an informal renewal with Comcast and potentially longer as negotiations continue. The current PEG capital and operating support payments in the Ramsey Washington area are similar if not greater than the current NSCC capital and operating support payments. It would seem logical that the suggestion that the current PEG capital and operating support payments are impacting subscriber retention and acquisition has been dismissed by Comcast as part of that settlement agreement with the Ramsey Washington cable commission.

Conclusion

FRC has concluded that the Proposal falls woefully short on the required financial information contained in the RFRP that is necessary to assess the impact on Comcast earned rate of return and any impact on subscriber rates. FRC believes that many of the modifications contained in the Proposal from the RFRP would likely allow Comcast to increase its profitability in the franchise area and the reduction of services provided by the NSCC/NSAC. The Proposal has not considered the already paid for I-Net and the impact of the recapture of analog PEG spectrum which will both allow Comcast to earn additional profits. The Proposal has suggested a use of the reserves that will place the NSAC in a venerable financial position and should have considered the operating payments to be, at a minimum, a voluntary payment.

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

EXTRACT OF MINUTES OF MEETING OF THE CITY COUNCIL OF THE CITY OF ROSEVILLE

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota, was held on the 16th day of June, at 6:00 p.m.

The following members were present:

and the following were absent:

Councilmember ____________ introduced the following resolution and moved its adoption:

RESOLUTION NO._______

RESOLUTION RENEWING OF COMCAST OF MINNESOTA, INC., CABLE FRANCHISE

WHEREAS, the City of _____________________ (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)(l) 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 this 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 (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 considered all public comment including that contained within the *Staff Report* and RFRP, the Proposal and the Executive Summary Reports; and

WHEREAS. the Commission, on May 15, 2014, adopted a resolution recommending to the Member Cities that the Member Cities issue a preliminary assessment that the Comcast Franchises should not be renewed; and

WHEREAS, despite the Commission's recommendation, the City, after carefully reviewing Comcast's Proposal determines the Proposal meets the future cable-related community needs and interests taking into account the cost of meeting such needs and interests;

NOW, THEREFORE, BE IT RESOLVED by the City Council (the "Council") of the City of Roseville, Minnesota (the 'City"), that:

1. Each of the above recitals is hereby incorporated as a finding of fact by the City.

2. The City hereby rejects the Commission's recommendation and renews the Comcast Franchise pursuant to the terms of the Comcast Proposal.

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

The motion for the adoption of the foregoing resolution was duly seconded by ____________________, and upon vote taken thereon, the following voted in favor thereof:

the following voted against the same: , and the following abstained: .

WHEREUPON said resolution was declared duly passed and adopted.

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the June 16 with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this 16th day of June, 2014.

____
Patrick Trudgeon, City Manager

(Seal)

North
Suburban
Communications
Commission

CTV North Suburbs

North Suburban Communications Commission • North Suburban Access Corporation
2670 Arthur Street • Roseville, MN 55113 • Phone: (NSCC) 651-792-7500 (CTV) 651-792-7515 Fax: 651-792-7501 • www.CTVNorthSuburbs.org

NORTH SUBURBAN COMMUNICATION COMMISSION
Special Meeting
MINUTES
May 15, 2014

I. Call to Order

Board Chair Steve Beilke called the meeting to order at 6:00 pm at the CTV North Suburbs facility in Roseville.

II. Roll Call

The following Board Members were in attendance:

Craig Wilson, Arden Hills
Rick Talbot, Falcon Heights
Jeff Dains, Lauderdale
Rick Montour, Little Canada
Barb Haake, Mounds View, Secretary/Treasurer
Gina Bauman, New Brighton, Vice Chair
Steve Beilke, North Oaks, Chair
Dan Roe, Roseville
Ady Wickstrom, Shoreview

Others Present:
Coralie Wilson, Executive Director
Mike Bradley, Outside Counsel, Bradley, Hagen & Gullickson
Sue Buske, Consultant, Buske Group
Dick Nielson, Consultant, CBG Consulting
Dick Treich, Consultant, Front Range Consulting
Randall Tietjen, Robins, Kaplan, Miller & Ciresi, Outside Counsel, Comcast
Emmett Coleman, Comcast
Karly Werner, Comcast
Mark Hughes, Resident of Shoreview
Mike Munzenrider, Reporter with Lillie News

III. Approval of Agenda

Mr. Roe moved, seconded by Ms. Bauman, to approve the agenda. The motion was approved unanimously.

IV. Public Comment

Mr. Mark Hughes, Executive Producer of Disability Viewpoints, commented on the possible repercussions of reduced funding for CTV, which could include staff reductions, program elimination or reductions and downsizing of volunteer base.

V. General Business

A. A Resolution to Recommend to Member Cities to Accept or Preliminary Deny Comcast Proposal for a Renewed Cable Franchise

Mr. Beilke suggested, and consensus was reached, that the following format for the General Business Section of the meeting.

Report from the Franchise Renewal Committee
Staff and Consultant Reports
Questions from Commission Members
Comcast Comments
Motion to Adopt a Resolution with a vote

Mr. Montour noted that the Franchise Renewal Committee had met on May 13 and the three recommendations were presented and reviewed. The recommendations were to Accept; to Preliminarily Deny or to Preliminarily Deny but delay the effective date to May 22 in order to determine Comcast's interest in tolling the formal process. The recommendation of the Franchise Renewal Committee, following a vote of three(3) yes and one(1) no (Mr. Schwerm, Shoreview), is for the Commission to consider the recommendations to Preliminary Deny or Preliminary Deny with tolling.

Mr. Bradley reviewed recent correspondence between his office and Comcast.
Ms. Buske, The Buske Group, reported on the community needs ascertainment and the Comcast subscriber survey.
Mr. Nielsen, CBG Consulting, reported on the technical issues and I-Net/PEG Issues.
Mr. Treich, Front Range Consulting, reported on the financial aspects of the proposal and other financial considerations.
Ms. Wilson reported on the PEG Funding, the PEG channels, customer service and the Model Franchise Agreement.

Following the consultant and staff presentations, Ms. Wilson noted that the staff recommendation is to preliminarily deny the Comcast Proposal for a Renewed Cable Franchise.

Mr. Bradley reviewed the three resolutions presented to the commission for their consideration.

Mr. Tietjen, Outside Counsel for Comcast, addressed the Commission stating that it is the opinion of Comcast that their proposal is fair.

Mr. Wilson moved, seconded by Mr. Dains to adopt Resolution 2014-04 Preliminary Assessment That the Comcast of Minnesota, Inc., Cable Franchise Should Not Be Renewed. Following discussion a vote was taken with eight (8) yes and one (1) no (Ady Wickstrom, Shoreview) to accept the motion.

VI. Adjournment

Mr. Talbot moved, seconded by Mr. Montour, to adjourn the meeting. The motion was approved, and the meeting adjourned at 7:40 pm.

Respectfully Submitted

____

Barb Haake, Secretary/Treasurer